Submitted 16/16 Appl

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Leave to file brief granted 1st Nov.

Judge Davis

Affirmed

Judge Clifford

Dec. 1872

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~449.~~ ~~230~~ 141

JAMES C. VOORHEES, ASSIGNEE IN BANKRUPTCY OF JOHN N. BONESTEEL, APPELLANT,

vs.

JOHN N. BONESTEEL AND SOPHIA H. BONESTEEL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED DECEMBER 28, 1870.

Dec. 1872

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No. 449.

JAMES C. VOORHEES, ASSIGNEE IN BANKRUPTCY OF JOHN N. BONESTEEL, APPELLANT,

vs.

JOHN N. BONESTEEL AND SOPHIA H. BONESTEEL.

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1 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Charles W. Newton, clerk of the circuit court of the United States of America for the eastern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, this 26th day of November, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the said United States, the ninety-fifth.

[SEAL.] CHA'S W. NEWTON, *Clerk.*

2

3 To the judges of the circuit court of the United States for the eastern district of New York:

James C. Voorhees, assignee in bankruptcy of John N. Bonesteel, bankrupt, of the city of New York, in the State of New York, and a citizen of the State of New York, brings this his bill against John N. Bonesteel and Sophia H. Bonesteel, both of the city of Brooklyn, in the State of New York, and both citizens of the State of New York.

And therefore your orator complains and says that, heretofore, and on an' about the 28th day of February, A. D. 1868, the said John N. Bonesteel, then residing in the United States of America, did address to the judge of the district court of the United States for the southern district New York, and did apply to him by petition, as provided in the eleventh section of the act of Congress, approved March 2nd, A. D. 1867, entitled "An act to establish a uniform system of bankruptcy throughout the United States," setting forth, among other things, that he had for the longest period during the six months next immediately preceding the filing of said petition carried on business at the city of New York,

4 in the said southern district; that he owed debts exceeding the amount of three hundred dollars; his place of business; his inability to pay all his debts in full; his willingness to surrender all his estate an' effects for the benefit of his creditors, and his desire to obtain the benefit of the said act.

And your orator further shows that the said petition was duly filed in said district court for the said southern district on the day and year last aforesaid; that the same was in the form required by said act, and the general orders and forms thereunder established and promulgated by the Supreme Court of the United States; that annexed thereto were the several oaths and affidavits and schedules required by the said act, general orders and forms, and substantially in form as required thereby.

And your orator further shows that, on the filing of said petition, such proceedings were thereupon had in said court thereunder; that on the 8th day of April, A. D. 1868, at the first general meeting of the creditors of said bankrupt, duly called and holden, your orator was duly elected and chosen the assignee of said John N. Bonesteel in said bankruptcy; that his appointment was thereupon duly reported to and confirmed by the court; that he thereupon entered upon his duties as such assignee and is still acting as such.

5 And your orator further shows that there have been debts proved under said bankruptcy proceedings exceeding ten thou-

sand dollars in amount; that the bankrupt's schedule therein of debts includes debts to the amount of more than thirty thousand dollars; that they include no assets, save a note against one Derickson for the sum of $1,743 26, which your orator believes to be utterly worthless; that no assets have come to the hands of your orator, as such assignee, and that he believes that nothing can be realized from the assets mentioned in the bankrupt's schedule; that all the debts proved in said proceedings and mentioned in said bankrupt's schedule were contracted prior to the year 1866, except one for about the sum of $125 00 to one John P. Fause, and that the said bankrupt as your orator is informed and believes, has been in fact insolvent and bankrupt since the year 1859.

And your orator further shows that he has received the deed of assignment to him as such assignee, duly executed as required by said act, and has duly given notice of his appointment as such assignee.

And your orator further shows that the defendant Sophia H. Bonesteel, who is the wife of the defendant John N. Bonesteel, has
6 standing in her name upon the books of the Nicolson Pavement Company of Brooklyn, which is a corporation organized under the general laws of the State of New York, eleven hundred and forty-five shares of the capital stock of the said company of the par value of one hundred and fourteen thousand five hundred dollars, and that she holds stock certificates of said company therefor; and that, as your orator is informed and believes, the same is of the value of upwards of thirty thousand dollars.

And your orator further shows that the said stock, although standing in the name of said Sophia H. Bonesteel, is, as he is informed and believes, in fact and in truth the property of the said John N. Bonesteel, and as such should have been included in his inventory of property annexed to his said petition in bankruptcy, and should have been delivered to your orator as such assignee, and should be applied to the payment of the debts of the said John N. Bonesteel, which have been proved and are provable in said proceedings in bankruptcy.

And your orator further shows that, as he is informed and believes, the said Sophia H. Bonesteel became possessed of said stock
7 under the following circumstances, namely: That, in or about the year 1866, one Samuel Nicholson was the patentee of certain letters-patent of the United States, issued to him for improvement in wooden pavements, and had assigned to one Jonathan Taylor the exclusive licence and right of laying, and permitting others to lay, said pavement in said city of Brooklyn; that the said Taylor, in said year 1866, employed and requested the said John N. Bonesteel to negotiate a sale of said licence and right of laying, and permitting others to lay, said pavement in the said city of Brooklyn; that thereupon the said John N. Bonesteel did negotiate a sale to certain parties of one-half of said right and licence for the sum of ten thousand dollars, which was paid therefor, and in consideration thereof, and in payment for the said services so rendered by the said John N. Bonesteel in negotiating said sale, and also for other services rendered by said John N. Bonesteel to said Taylor, said Taylor did agree to assign to said John N. Bonesteel the other half of said right or licence; that the said Taylor thereupon, and on or about the 7th day of December, 1866, by the direction of said John N. Bonesteel, and to vest in her the
8 said one-half interest so agreed to be conveyed, and also to vest in said parties the other said one-half interest purchased by them, did execute and deliver an assignment of the whole of said right and licence, conveying one-half thereof to said Sophia H. Bonesteel, and one-half thereof to said parties who purchased the same; and said

Nicholson thereafter also executed to said parties and said Sophia H. Bonesteel a confirmatory licence for said city of Brooklyn; that thereafter, and on the day of October, 1867, the said parties and said Sophia H. Bonesteel and the members of the firm of William Smith & Co. (to which firm the said John N. Bonesteel had sold one-half of the said interest so conveyed to the said Sophia H. Bonesteel for the sum of ten thousand dollars) organized, and caused to be organized, the said Nicholson Pavement Company of Brooklyn, as a corporation, pursuant to an act of the legislature of the State of New York, approved February 17th, 1848, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, and chemical purposes," and the several acts of said legislature amendatory thereof; that, upon the organization of said corporation, and in consideration of the
9 transfer to it of said right and licence for the said city of Brooklyn, there was issued to said parties, said firm of William Smith & Co. and said Sophia H. Bonesteel, the whole capital stock of said corporation in the several proportions of their interest in said licence, and to the said Sophia H. Bonesteel, as the owner of one-fourth of said licence, 1,150 shares of said stock of the par value of $115,000 being one-fourth thereof, less $40,000 of the par value thereof reserved for the working capital of said corporation.

And your orator further shows that, as he is informed and believes, *that* since then the said John N. Bonesteel has sold, and caused the said Sophia H. Bonesteel to transfer to the firm of Page, Kidder & Co., of the city of New York, forty-four other shares of said capital stock afterwards issued to her out of said $40,000 reserved capital, for moneys advanced by the said John N. Bonesteel for said company for the consideration of three thousand dollars, which was paid; and that since the filing of said petition in bankruptcy five of the said 1,150 shares so originally issued to said Sophia H. Bonesteel have been transferred to said John N. Bonesteel, leaving 1,145 shares thereof still standing in her
10 name, and five shares thereof still standing in his name, and the said John N. Bonesteel is further entitled to one-fourth of the said $40,000 of capital reserved for working purposes, or one hundred shares, less 44 shares thereof already issued and sold to Page, Kidder & Co., as aforesaid.

And your orator further shows that, as he is informed and believes, *that* ever since the organization of said Nicholson Pavement Company the said John N. Bonesteel has actually participated in the management thereof, and has been connected therewith, and has been engaged in no other business, and has attended to his interest therein; that said company, since its organization, has had many and profitable contracts with the corporate authorities of said city of Brooklyn for laying said pavement therein under said licence, from which said company has derived large gains and profits, upon which said stock has been entitled to receive or has received large dividends; that the said John N. Bonesteel did not include said stock, or any part thereof, or any dividend received therefrom or due on account thereof, or said sum of ten
11 thousand dollars which was received on the said sale of said one-fourth of said licence from said William Smith & Co. prior to the filing of said petition in bankruptcy in his inventory of property annexed to his said petition, but wholey omitted the same therefrom, nor has he delivered or caused to be delivered the same, or any part thereof, or the said $3,000 so received from said Page, Kidder & Co. to your orator as such assignee; that both of the defendants deny your orator's title and right to said stocks, dividends, or moneys, and refuse to surrender them to your orator as such assignee in bankruptcy, and said

Sophia H. Bonesteel claims and insists that said stock, dividends, and moneys are her sole and separate property, (save the said five shares so transferred to the said John N. Bonesteel,) freed from all claims of your orator as such assignee, or from the creditors of said John N. Bonesteel, her husband; and your orator believes and fears that the said John N. Bonesteel and Sophia H. Bonesteel will transfer and dispose of the said stock and money so held by them unless restrained by the injunction of this honorable court.

Forasmuch, therefore, as your orator is remidiless in and by the strict rules of law, and cannot have adequate and proper relief in the premises, save in a court of equity, where matters of this sort are properly cognizable, and to the end therefore that the said defendents may, if they can, show why your orator should not have the relief hereby prayed; and may upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereinunder written, they are respectively required to answer, that is to say:

1st. Whether the said John N. Bonesteel did not, on or about the 28th day of February, 1868, file his petition in bankruptcy, with schedule oaths and verifications thereto annexed, as hereinbefore in this bill stated?

2nd. Whether your orator was not appointed assignee in bankruptcy of the said John N. Bonesteel, and has not accepted and been confirmed by the court, and is not now acting as such assignee, as stated in this bill?

3rd. What amount of debts has been proved in said bankruptcy proceedings? What amount of debts are included in said schedules? What assets are included in said schedules and what is their value respectively? When were the debts included in said schedules as owing by said John N. Bonesteel incur'ed? Has not the said John N. Bonesteel been in fact insolvent since the year 1859? For how long has he been insolvent?

4th. Whether your orator has not received the deed of assignment as assignee, and published a notice of his appointment as such?

5th. Whether the said Sophia H. Bonesteel has not standing in her name upon the books of the said Nicholson Pavement Company 1,145, or some other number of, and how many shares, of the capital stock of said company. If less than 1,145 shares, when and to whom, and for what consideration has she transfer'ed them, and what has been done with the consideration paid? Whether the same are not of the par value of 100 dollars per share? Whether she does not hold stock certificates for the stock held by her? What is the present value of said stock?

6th. Is not the said stock standing in the name of the said Sophia H. Bonesteel, in truth the property of said John N. Bonesteel? Did not the said Sophia H. Bonesteel become the holder of said stock in the manner stated in this bill, and if not, how otherwise? Was not the Nicolson Pavement Company formed and the said licence transfered to it by the parties, as stated in this bill? Was not its stock issued as stated in this bill? How much of its stock was issued to the said Sophia H. Bonesteel, and how much was issued for its working capital? How much of said stock reserved for working capital has since been issued to the said Sophia H. Bonesteel, and what disposition of the same or any portion thereof has been made, and to whom, and upon what consideration; to whom was the same paid, and what has been done with the same?

7th. Was not one-fourth of said licence transfer'ed to the firm of William Smith & Co.? Who negotiated the sale to them? Where was the same made? How much was paid therefor? To whom was the same paid? What disposition has been made of the proceeds realized on such sale? Did not the said John N. Bonesteel personal'y negotiate such sale to said William Smith & Co.?

8th. Did not the said Jonathan Taylor convey the one-half of said licence to the said Sophia H. Bonesteel at the date and upon the consideration stated in this bill; if not, how otherwise? Was not the said conveyance made wholly or in part in consideration of services rendered to said Taylor by John N. Bonesteel? What services did the said John N. Bonesteel render to the said Jonathan Taylor therefor?

When was it first agreed that said Taylor should thus convey the
15 said one-half interest; was it not on the same date that the conveyance was made? Did not the said John N. Bonesteel, at the request of said Taylor, negotiate the sale of a one-half interest in said licence, and to whom, at the sum of ten thousand dollars? Did he not refuse to disclose to said Taylor the names of the parties to whom he had thus negotiated the sale of said one-half interest until said Taylor had agreed to give him the other one-half? Was not the assignment of the one-half thus sold and of the other half transfer'ed to the said Sophia H. Bonesteel made on the same day in the same instrument? Who drew such instrument? Was the said Sophia H. Bonesteel present at the execution thereof? Where was the same executed and delivered? Who was present at such execution and delivery, and to whom was the same delivered? Did not the said Taylor propose to give but a third interest in said licence for the said services of said John N. Bonesteel, and to retain a sixth interest for himself? And did not the said John N. Bonesteel refuse to disclose the names of the parties who had agreed to purchase the one-half interest until the said Taylor agreed to transfer the whole of the other half to said Sophia H. Bonesteel retain-
16 ing no interest for himself?

9th. Has not five of the 1,150 shares of said stock original'y issued to said Sophia H. Bonesteel been transfer'ed to the said John N. Bonesteel since the filing of his petition in bankruptcy as stated in this bill? Who is the owner of said five shares now? If they have been transfer'ed by the said John N. Bonesteel, to whom have they been transferred and upon what consideration? Who received and what has been done with, the proceeds?

10th. Has not the said John N. Bonesteel ever since the organization of said company actively participated in the management thereof and been connected therewith? What services has been rendered to said company? Has he been engaged in any other business? What contracts for laying said pavement has said company had, and what contracts therefor has it performed since its organization? With whom have said contracts been made? What profits have been realized from said contracts and what disposition thereof has been made?

11th. Was the said stock, or any part thereof, or any dividends therefrom, or due thereon, or the moneys received on sale of the one-
17 fourth interest in said licence from William Smith & Co., or any part of the said stock, dividends or moneys included in the schedules annexed to the said petition in bankruptcy of said John N. Bonesteel? Has any part thereof or of the $3,000 received from Page Kidder & Co. ever been delivered or come to your orator's possession as such assignee?

And that the said defendants be decreed by the final decree herein to account and pay over to your orator all sums of money received by

them or either of them, in any way by reason of the said transfer of the said one-half interest in said licence to said Sophia H. Bonesteel, including the amount received from said William Smith & Co. and Page, Kidder & Co. from sales of stock issued by said pavement company, from dividends paid by said company or due upon its stock; and that they also be decreed to transfer to your orator the said stock so held by them or each of them in said company, and that, pending this suit, the said defendants and each of them may be enjoined and restrained from selling, assigning, encumbering, parting with, disposing of, or intermeddling with, the said stock, moneys, or dividends, or any part thereof, and that a receiver may be appointed pending this action,
18 pursuant to the rules and practice of this court, to take possession of all such stock, money, and dividends, and that the same may, by the final decree herein, be adjudged and decreed to be the property of your orator, as such assignee in bankruptcy; and that your orator may have such further and other relief herein, intermediate or ultimate, as the circumstances of the case may require and as may be agreeable to equity.

May it please the court to grant to your orator a writ of subpœna to be issued out of and under the seal of this honorable court addressed to the said John N. Bonesteel and Sophia H. Bonesteel, commanding them upon a certain day and under a certain penalty therein to be limited, personal'y to be and appear before this honorable court, and then and there to answer the premises and abide, stand, and perform such order, direction, and decree in the premises as to this court shall seem meet.

And may it also please the court to grant to your orator a writ of injunction to be issued out of and under the seal of this honorable court directed to the said John H. Bonesteel and Sophia H. Bonesteel, strictly enjoining and restraining them, their agents, servants, and attorneys in manner aforesaid.

And your orator will ever pray, &c.

JAMES VOORHEES.

COTTERILL BROTHERS,
19 *Solicitors for Orator,*
175 *Broadway, New York City.*

J. P. C. COTTERILL,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this 3rd day of March, A. D. 1870, before me personal'y appeared James C. Voorhees, who, being by me first duly sworn, deposed and said that he has read the foregoing bill subscribed by him, and that he knows the contents thereof, and that the same are true, of his own knowledge, except as to the matters stated upon information and belief, and that as to those matters, he believe it to be true.

EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

The defendants are required to answer the several interrogatories numbered 1 to 11, both inclusive.

COTTERILL BROTHERS,
Solicitors for Orator.

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22 (Indorsed:) United States cir't c't., eastern dist. of N. Y. James C. Voorhees, assignee, &c., vs. John N. Bonesteel & Sophia H. Bonesteel. Bill. Cotterill Brothers, compl't's sol'rs., 175 Broadway, N. Y. City. Filed March 5th, 1870.

23 United States circuit court, eastern district of New York.

JAMES C. VOORHEES, ASSIGNEE IN BANKRUPTCY of John N. Bonesteel, bankrupt,
vs.
JOHN N. BONESTEEL & SOPHIA H. BONESTEEL. } In equity

Upon reading and filing the bill of complaint herein, and on motion of Coterill Brothers, solicitors for the complainant, *this* ordered that the defendants show cause on the 11th day of March, A. D. 1870, at the United States circuit court room, in the city of Brooklyn, in said eastern district, at number 139 Montague street, in the city of Brooklyn, at 12 o'clock m., of that day, or as soon thereafter as counsel can be heard, why an injunction should not issue, and a receiver be appointed, pursuant to the prayers of said bill; such cause to be shown on the said bill, and on the affidavit of P. J. Clotterill, hereto annexed, and to be herewith served.

CHA'S L. BENEDICT,
District Judge.

24 United States circuit court, eastern district of New York.

JAMES C. VOORHEES, ASSIGNEE IN BANKRUPTY of John N. Bonesteel, bankrupt,
vs.
JOHN N. BONESTEEL & SOPHIA H. BONESTEEL.

EASTERN DISTRICT OF NEW YORK:

Jedd P. C. Cotterill, being duly sworn, says that he is one of the complainant's solicitors herein; that, on or about the 2d day of February, 1869, deponent filed in the district court of the United States for the southern district of New York, in the bankruptcy proceedings mentioned in the bill of complaint herein, a petition by said orator against said defendants, setting forth substantially the fact stated, & praying substantially the relief prayed in said bill of complaint.

That an order was made on said petition requiring said defendants to appear and answer said petition, & show cause why the prayer thereof should not be granted; that said Sophia H. Bonesteel appeared & filed her answer to said petition, a copy whereof is hereto annexed;
25 that an order was then made referring said proceedings, for the purpose of taking testimony on the issues raised; that said testimony was taken and reported to the court, and said matter finally heard, & on the 31st day of June, 1869, a final order was made granting the prayer of said petition, and directing said Sophia H. Bonesteel to transfer the stock named in said bill to the petitioner, being the orator in this cause; that, on a petition for review, filed in the circuit court for said southern district, it was decided, without passing upon the merits involved, that inasmuch as said Sophia H. Bonesteel had not appealed from said final decree in time, and as the practice was then unsettled as to such proceedings to set aside all such proceedings as

irregular, with leave to the orator to file a bill in chance'y, praying the relief asked in said petition.

J. P. CLOTERILL.

Sworn to before me this 4th day of March, 1870.
DWIGHT A. PERRY,
Notary Public, Kings Co.

26

27 U. S. dist. court, southern dist. of New York.

IN THE MATTER OF THE PETITION OF JAMES C. Voorhees, assignee of John N. Bonesteel, for, &c. } In bankruptcy.

And now comes the said Sophia H. Bonesteel, by W. J. Butler, her solicitor, and for answer to said petition, says that she admits the fact set forth in said petition in regard to the organization of the Nicholson Pavement of Brooklyn, and the issuing of her eleven hundred and fifty shares of stock of said company, and that she now has, standing in her name on the books of said company, eleven hundred and forty-five (1,145) shares of its stock, and that it is of the par value of $115,000; and that the said bankrupt has been insolvent and without means, except such as have been furnished by her for the period of ten years last past; but the said Sophia H. Bonesteel denies that said stock is now or was ever the property of John N. Bonesteel, the said bankrupt, or that it is now or was ever liable to the payment of his debts, or that he ever had any interest therein, and claims and alleges that the
28 same is the individual and separate property & estate of her, the said Sophia H. Bonesteel, and that she has advanced large sums of money to meet her share of the expenditure of the said company, & to render available her said interest therein.

And further answering the said petition, she says that, at and previous to the time of said John N. Bonesteel entering into the service of said Jonathan Taylor, he was and had been carrying on the dry-goods commission business, in the city of New York, as the agent & attorney-in-fact of said Sophia H. Bonesteel, & in her name, & solely upon capital furnished by her, being money obtained by her from her father, one Sherman Hartwell, of Bridgeport, Connecticut; and that the family of said bankrupt, including this respondent, & their children, had long been, and then were, living in a dwelling-house owned and furnished by the said Hartwell, & supported wholly by means derived from said Hartwell by the respondent, and by the profits of the said business so carried on as aforesaid, by the said bankrupt, upon capital owned or procured by her; that the money so advanced by said Hartwell, & the purchase of said house & furniture, & the use of the same for said bankrupt's family were procured by this respondent, and if the sums advanced, should not be re-
29 paid to said Hartwell during his lifetime, the same were to be chargeable to her share in her said father's estate which is greatly more than the amount of such advances; that, while so engaged in business as aforesaid as the agent of said Sophia H. Bonesteel, the services of said bankrupt were sought by said Taylor in the interest of said Nicholson pavement in the cities of Brooklyn, New York, and Jersey City, on account of the friendship existing between them, and on account of the business capacity and acquaintance of said John Bonesteel, & on account more especially of the influence, wealth, and position of certain parties con-

nected by marriage with the said Sophia H. Bonesteel; that said bankrupt was not then engaged in any other business than as aforesaid; that, with the knowledge and consent of this respondent & the assurance from said Taylor that she should not be allowed to suffer any loss thereby, the said business was given up at a great sacrifice, and it was agreed that said John N. Bonesteel should devote his time to the pavement interest for said Taylor's benefit; and that in consideration thereof, and as compensation to this respondent for his services and time to which she was justly entitled, and for this sacrifice by her by the abandon-
30 ment of said business, and not otherwise, it was agreed that an interest in the patent, or right or license to lay pavement in the city of Brooklyn, should be conveyed to her, said Sophia H. Bonesteel. She further says that such conveyance was subsequently made to her, and that the interest so conveyed was one-half of the value of about $10,000 at that time; that such arrangement was made in good faith, and without reference to the fact that said John N. Bonesteel was insolvent, and without any intent whatever to defraud his creditors; that all the consideration for such interest moved from this respondent by reason of the facts aforesaid, & that she is justly and legally entitled to claim and hold, and she does claim and hold, the same as her separate and individual estate, and no money whatever or other consideration was ever paid by said bankrupt for such interest or any part thereof.

Said Sophia H. Bonesteel denies that any interest in said pavement patent or license was sold to William Smith & Co. by said bankrupt, but alleges that such sale was negotiated by this respondent, and by him as her agent, and the transfer subsequently made by her. She
31 also denies that the transfer was made to her by said Taylor in pursuance of any agreement to give an interest to said bankrupt, and by his direction, as is in said petition in that behalf alleged, and alleges that such transfer was made to her by said Taylor in accordance with the arrangement hereinbefore set forth, and not otherwise, to wit, in pursuance of an agreement that the conveyance should be made to her, and for her exclusive separate use and benefit; and in answer to each & every other matter in said petition alleged, and not herein specifically admitted, traversed, or denied, respondent says that she has not sufficient knowledge or information to form a belief, and therefore she denies the same.

Wherefore said Sophia H. Bonesteel prays that said petition may be dismissed and the injunction allowed thereon vacated and set aside.

(Signed) SOPHIA H. BONESTEEL.

W. J. BUTLER,
Att'y for S. H. Bonesteel.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Sophia H. Bonesteel, above-named, being duly sworn, says that she has read the foregoing answer, and that she knows the contents
31 thereof, and that the same is true of her own knowledge.

(Signed.) SOPHIA H. BONESTEEL.

Subscribed and sworn to before me this twentieth day of February, 1869.

ISAAC DAYTON,
Register in Bankruptcy.

I copy of the within order served on defendent by leaving the same at this last or usual place of residence on the 7th day of March, 1870,

with a person of mature age, said person being a Miss Bonesteel, a free white person, and residing in the family of defendant.

FRANCIS L. DALLON,
U. S. Marshall, E. D. of N. Y.

(Indorsed:) United States circuit court south. dist. of New York. In equity. James C. Voorhees, assignee, &c., against John N. Bonesteel & Sophia H. Bonesteel. Order to show cause why injunction should not issue, &c. Cotterill Brothers, compl'ts sol'rs. Filed & ent'd Mar. 5th, 1870.

33 The President of the United States of America to John N. Bonesteel and Sophia H. Bonesteel, greeting:

You are hereby commanded that you and each of you personally appear before the judges of the circuit court of the United States of America for the eastern district of New York, in the second circuit, in equity, on the first Monday in April, A. D. 1870, wheresoever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by James C. Voorhees, assignee, &c., and to do further and receive what the said court shall consider in that behalf, and this you are not to omit under the penalty on you of two hundred and fifty dollars.

Witness Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Brooklyn, on the 5th day of March, in the year one thousand eight hundred and seventy, and of the independence of the United States of America the ninety-fourth.

[L. S.] CHA'S W. NEWTON, *Clerk.*

COTERILL BROTHERS,
Complainant's Solicitor, 173 *Broadway.*

The defendants are required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of April, 1870, or the bill will be taken "pro *confesso*" against them.

CHA'S W. NEWTON, *Clerk.*

Complainant's Solicitor.

34 I hereby certify that, on the 7th day of March, 1870, I served the within subpœna on the within-named defendants, they not being found, by leaving copies thereof for each of said defendants at the dwelling-house & place of abode of said defendants in the city of Brooklyn, with Miss Bonesteel, a free white person, who is a member and resides in the family of defendants.

FRANCIS L. DALLON,
U. S. Marshall, E. D. of N. Y.

$4 48 fees paid.

(Indorsed:) 581. U. S. circuit court, eastern district of New York. James C. Voorhees, assignee, &c., vs. John N. Bonesteel et al. Subpœna ad respondendum. Filed April 4, 1870.

35 United States circuit court, eastern district of New York.

JAMES C. VOORHEES, ASSIGNEE, *vs.* JOHN N. BONESTEEL AND SOPHIA H. BONESTEEL.

The above-named defendant Sophia H. Bonesteel, now and at all

times hereafter saving and reserving to herself all manner of benefit and advantage of exception to the many errors and insufficiences in the complainant's said bill of complaint contained for answer thereunto, or to so much or such parts thereof as this defendant is advised is material for her to make answer unto, she answers and says she admits each and every allegation in such complaint contained from the beginning thereof to and including the allegation on the third page thereof, to wit, that such orator has received the deed of assignment to him as such assignee, and that he has given notice of his appointment as such assignee.

And this defendant, further answering, says that she admits
36 that she is the wife of the defendant John N. Bonesteel, and that she has, standing in her name upon the books of the Nicholson Pavement Company of Brooklyn, a corporation duly organized under the laws of the State of New York, eleven hundred and forty-five shares of the capital stock of such company of the par value alleged in such bill of complaint, and that she holds stock certificates therefor; but she denies that such stock is of the value of thirety thousand dollars, and avers that its value is less than one-third of such sum.

The defendant, further answering, denies that such stock is or ever was the property of said John N. Bonesteel, or that he has or ever had any interest therein; and denies that it should have been included in his said inventory of property annexed to his said petition in bankruptcy; and denies that such stock should have been delivered to such assignee, or that it should be applied to the payment of such bankrupt' debts as in such bill alleged.

The defendant, further answering, says that the circumstances set forth and alleged in such bill under which she became possessed of such stock are not correctly stated in such bill; and she denies each
37 and every allegation of such bill in that behalf so far as the same are different from, or inconsistent with, the statement of such circumstances as hereinafter set forth.

The defendant, further answering, says that such 1,145 shares are her individual and separate property and estate, and ever have been, and avers that for the purpose of promoting and advancing the same, she has, from time to time, paid out large sums of her own money to meet her share of necessary expenditures of said company to give value to such stock.

The defendant, further answering, says that, at and previous to the time that said bankrupt entered into the service of Jonathan Taylor, he was and had been carrying on a dry goods commission business in the city of New York, as the agent and attorney-in-fact of this defendant Sophia H. Bonesteel, in her name and for her account, and sol'y upon capital furnished by her, the same being money obtained by her from her father, Sherman Hartwell, of Bridgeport, Conne'ticut, and that the family of said bankrupt, including this defendant and
38 her children, had long been and then were living in a dwelling-house then, and now owned and furnished by said Hartwell, and the same was wholly supported by means supplied by said Hartwell, in consideration of his love and affection for defendant and her said family, and of the profits of such dry goods commission business.

That the sums so advanced by such Hartwell, in the manner and for the purpose aforesaid, if not repaid to said Hartwell in his lifetime, it is understood and arranged by him and by the defendant, are to be charged to her share in her said father's estate, which is greatly more than the amount of such advances; that such advances amount to more than the sum of twenty thousand dollars.

That while this defendant was so engaged in such dry goods commission business, and was so employing such bankrupt therein, upon capital so furnished by her said father as aforesaid, the services, aid, and influence of this defendant, and through her the aid and influence of her friends were sought by said Taylor, in the interest of said Nicholson pavement, in the city of Brooklyn; that said Taylor and this
39 defendant were old friends of many years, and this defendant had at that time influential and wealthy friends, of good position, who could aid in influencing Nich' pavement in Brooklyn, of which fact said Taylor was well aware; that said Taylor greatly desired the aid of this defendant and her said friends, and especially of one of them, to wit, the Hon. S. B. Chittendon, defendant's brother-in-law, who was in a position to be of great service in the matter, as said Taylor well knew, and agreed with this defendant that if she would procure such influence and aid, he would give her a one-half interest and right he then had to lay such pavement in said city of Brooklyn, and would give her said husband, to wit, said bankrupt, employment in promoting said pavement interest in the cities of New York, Brooklyn, and elsewhere, which the said Taylor claimed and said would bring to this defendant a much better and larger income and support to her family than she was then receiving from her said dry good' business; that the actual value of such one-half interest in such license was at that time doubtful and wholly conjectural, and whether it would ever be of any actual value depended upon whether advanta-
40 geous contracts could be procured to lay said pavement in said city of Brooklyn.

That this defendant accepted said proposition of said Taylor, and did thereupon aid him by her personal exertions and services in all proper ways within her power, in promoting such pavement interest in the city of Brooklyn, and did induce her said influential and wealthy friends to aid her in so promoting in various ways, and introducing such pavement in said city of Brooklyn, and did consent to abandon, and *and* did abandon her said dry goods commission business and devote her time and attention, and procure that of her friends, and their influence as aforesaid, to aid her in promoting and introducing such pavement as aforesaid; that thereupon and upon the acceptance of such proposition as aforesaid, and in consideration thereof said Taylor did, on or about the day of convey such one-half interest to the defendant Sophia H. Bonesteel, and that without such acceptance of such proposition, and the belief on said Taylor's part that this defendant could be of very great service in promoting such pavement interest as aforesaid, he, the said Taylor, would not have so conveyed such
41 one-half interest to her as aforesaid; that this defendant fully kept her part of such agreement in all respects, and secured the active aid of her said brother-in-law, the Hon. S. B. Chittendon, who was the first to introduce such pavement in Brooklyn by procuring a sample of the same to be laid in front of his own residence in Pierrepont st., Brooklyn, at his great expense, all which aid and service was rendered as aforesaid to the satisfaction of said Taylor.

That such conveyance was so made by said Taylor, and received by this defendant in good faith, and without any intent, thought, or purpose of defrauding said bankrupt's creditors or of wronging them in any way. That none of the money, assets, or property of said bankrupt was used to procure such conveyance nor was the same represented in any way in such one-half interest, nor is the same represented in any way in such 1,145 shares of such capital stock now held and owned by this defendant

as aforesaid. And this defendant claims and avers, she is legally, justly, and equitably entitled to claim & hold, and she does claim and
42 hold the same as her separarate and individual estate. That this defendant by her own exertions, and through and by the aid of said bankrupt as her agent, also negotiated a sale for said Taylor and others of one-half said interest in such license, and the said bankrupt had no interest whatever in such sale, nor anything to do with the same, except to act for and aid this defendant in such negotiations, as her agent.

That this defendant subsequently negotiated a sale of one-half of her own said interest for the sum of $10,000, to wit, on or about the 5th day of November, 1867, to William Smith and Company, and such bankrupt had no interest in such sale, or the proceeds thereof, and had nothing to do with the same except to aid this defendant as her agent in such negotiations. That such proceeds of such sale have long since been used and expended by this defendant in promoting her remaining interest in such pavement and in the support of herself and family, long before the filing of such bankrupt's said petition in bankruptcy. The defendants, further answering, admits that afterwards such company was organized with the shares and capital in such bill alleged, and
43 admits the issue of said stock as therein alleged, and says that this defendant received as her proper share of such stock 1,150 shares thereof, that being ¼ thereof, but denies that said bankrupt has sold 44 or any share of such stock to Page, Kidder and Co., or to any other person or persons for three thousand dollars, or for any price whatsoever, and alleges the fact to be, that this defendant negotiated and made such sale of such 44 shares for the price of $2,000, and no more. That this defendant admits that, since the filing of such petition, to wit, on, or about the 15 day of October, 1868, she transferred 5 shares of such stock as a gift to said bankrupt for the purpose of qualifying him to act as trustee in such company, to the end, that her interests might better be protected and promoted. The defendant, further answering, says that said husband, to wit, said bankrupt, was appointed superintendent of such company, on or about the 5 day of November, 1867, and as such she admits he has been active in the management thereof, for which services as such superintendent he has received a salary. That as to what contracts such company has had, or whether the same have been profitable this defendant is not able to state, except to say that she is in-
44 formed and believes that such company has had and performed sundry contracts with sundry commissioners in the city of Brooklyn, and that some of such contracts have yielded some profit, and some of them have entailed heavy losses. That no dividends have been declared to defendant's knowledge. That no contracts had been performed by such company, nor profits received or earned when said bankrupt filed his said petition. That this defendant admits that both she and said bankrupt deny that such assignee has any claim, right, title, or interest in such stock or property, and that this defendant refuses to surrender the same or any part thereof to such assignee, and admits that she claims the said 1,145 shares to be her sole and separate property, free from all claims of such assignee. That this defendant says she has not transferred, and has no intention of disposing of, or transferring her said 1,145 shares unless restrained by the injunction order of this honorable court, nor has said bankrupt transferred his said five shares, nor has she any reason to believe that he intends or desires to, or will transfer his said 5 shares unless restrained as alleged in such bill.

45 That, as to the several interrogations from 1 to 11, inclusive,

annexed to such bill, the said defendant makes answer thereto as follows, to wit:

1st. In answer to the first interrogatory she answers: Yes.

2nd. In answer to the 2d interrogatory she answers: Yes.

3d. In answer to the 3d interrogatory she says: She has no knowledge or information sufficient to base a belief, and is therefor unable to answer any of the questions under this head, except to say that she believes said bankrupt has been insolvent since about the year 1859.

4th. In answer to 4th interrogatory she answers: Yes.

5th. In answer to fifth interrogatory she answers to each and every of the questions under this head: Yes, and that she has such 1,145 shares standing in her name; that she has tranferred none of them; and, further, that she does not know the value of such shares, but believes it to be less than ten thousand (10,000) dollars.

6th. In answer to the questions included under the 6th head of
46 such interrogatories she says: That such stock so standing in her name is not in truth and in fact the property of said John N. Bonesteel. 2nd. That said Sophia H. Bonesteel did not become the holder of said stock in the manner stated in such bill, but she became the owner and holder thereof under the circumstances and in the manner above set forth in her answer to such bill, and to which she refers. 3d. That said company was formed, and said license was transferred by the parties, as stated in such bill, except that it is not true that said John N. Bonesteel was one of such parties, or had any interest therein. 4. That the stock was issued, as stated in such bill, to this defendant and other persons, but said John N. Bonesteel was not one of such persons, nor had he any interest in such issue. 5. That 1,150 shares were issued to said Sophia H. Bonesteel. 6th. That 400 shares were reserved for working capital. 7th. That 44 shares have since been issued to said Sophia H. Bonesteel, which she has sold to Page, Kidder & Co. for $2,000, which was paid to said Sophia, and which she has expended to support her family and to promote the said pavement interest in Brooklyn.

47 7th. That, in answer to the questions under the 7th head, she says: First. That ¼ of such license was transferred to said William Smith and Company. 2. That such sale was negotiated by such defendant, who was aided therein by her said husband, John N. Bonesteel. 3d. That the defendant does not remember the date of such transfer, but it occurred a short time prior to the organization of such pavement company in Brooklyn. 4th. That $10,000 were paid for such transfer. 5th. That such $10,000 was paid to said Sophia H. Bonesteel. 6th. That such sum has been expended by this defendant in supporting her family and in promoting the interests of such pavement in Brooklyn. 7th. That said John N. Bonesteel did personally aid this defendant in negotiating such sale, but not otherwise.

8th. In answer to the question under the 8th head, the defendant answers: 1st. That said Jonathan Taylor did convey the one half of said license to this defendant at the date in such bill alleged, but did not so convey upon consideration stated in said bill. 2nd. That such conveyance made was upon the condition hereinbefore set forth in this defendant's answer, and which she is advised it is not necessary here to repeat. 3d. That, according to the best knowledge,
48 information, and belief of this defendant, such conveyance was not made in consideration of services rendered to said Taylor by said John N. Bonesteel, but for services rendered by this defendant and her friends, without which such conveyance would not have been

made at all. 4th. That said John N. Bonesteel did not personally render any service for such conveyance. 5th. A short time before the organization of such pavement company, the precise date is not now remembered by this defendant. 6th. That, to the best of this defendant's knowledge and belief, the date of such agreement was not the same as the date of the conveyance. 7th. Said John N. Bonesteel, as this defendant's agent, and not otherwise, did, at the request of this defendant and of said Taylor, aid, and not otherwise, in negotiating a sale of a one-half interest in said license to Page, Kidder & Co., and to Kidder & Martin, for the price of ten thousand dollars. 8th. In answer to the question as to whether said John N. Bonesteel refused to disclose the names of the parties with whom he had negotiated until said Taylor had agreed to give him the other one-half, this defendant answers: No. 9th. To the next question as to the transfer
49 being made on the same day, this defendant answers, Yes. 10th. As to who drew the instrument, this defendant cannot give the name of the person, but believes it was some attorney employed for that purpose by said Taylor. 11th. That said Sophia H. Bonesteel had interviews with said Taylor in reference to such conveyance to be such ½ interest; but she is of the opinion that she was not present when the same was executed. 12th. That said John N. Bonesteel and said Taylor, and an attorney were present, as this defendant is informed and believes, when such conveyance was executed; that such conveyance was delivered to this defendant by said Taylor, by the hand of her said husband, her said agent in the matter. 13th. There was some talk of a conveyance of one-third or a less or different interest of said Taylor, but it did not refer to services rendered or to be rendered by said John N. Bonesteel in the matter, but to this defendant's services and that of her friends. 14th. This defendant is informed and believes that, but to be with her said agent, John N. Bonesteel, in the matter of such negotiations, did, when counseling with this defendant, refused to fully
50 inform said Taylor of the progress he had made, or to disclose the names of the parties he was negotiating with, until said Taylor had fully agreed with this defendant to transfer to her the whole of such one-half interest.

9th. In answer to first question under the 9th head, the defendant answer' Yes. 2nd. In answer to the 2nd question, she answers, John N. Bonesteel. 3d. In answer to the next question in order, she answer' that such five shares have not been since transferred, but the same now stands in the name of said John N. Bonesteel, and this defendant verily believes that he does not intend or desire to transfer the same.

10th. In answer to the 1st question under the 10th head, the defendant answers, Yes. 2nd. To the next question in order, she answers that he has rendered services as trustee, and has been active in the service of the company as superintendent thereof. 3d. To the next question, she answers that said John N. Bonesteel has not been engaged in other business since the organization of such company. 4th. In answer
51 to the next question, as to contracts, &c., she answers that she is unable to state what contracts for laying said payment said company has had or has performed since its organization, except that she is informed and believes that such company has made and performed sundry contracts with commissioners in the city of Brooklyn since the organization of such company. 5th. That such contracts have been made with sundry commissioners, acting for the city of Brooklyn or for the property holders, on the streets where such pavement has been laid, or both. 6th. That this defendant is unable to state what, if any, profits have been realized from such contracts, nor what disposition thereof has

been made, if any profits have been realized, except that she is informed and believes that considerable sums of money have been applied to the current expenses, the purchasing of materials used or now on hand, and of tools and working implements, and in paying debts incurred before such contracts were procured and in the course of the prosecution thereof.

52 In answer the first question under the 11th head, this defendant answers, No, to the best of her knowledge & belief. To the next question in order, she answers: 1st. That said Page, Kidder & Co., did not pay $3,000 for such stock; but they paid $2,000 to this defendant, some of which has 'ever been delivered to or come to the possession of said orator as such assignee.

As to any other matters in said complaint contained not herein specifically confessed or avoided, traversed or denied, the defendant says that she has not sufficient knowledge or information upon which to form a belief, and therefore denies each and every allegation thereof.

And this defendant submits to this honorable court that all and every of the matters in the said complainant's bill mentioned and complained of are matter' which may be tried and determined at law, and with respect to which the said complainant is not entitled to any relief from a court of equity, and this defendant hopes she shall have the same benefit of this defence as if she had answered to the said complainant's bill.

53 And this defendant denies that such orator is entitled to any discovery or account or to an injunction or to the relief or any part thereof prayed for by him in his prayer for judgment or to any equitable or other relief or decree whatever.

All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with her reasonable costs and charges in that behalf most wrongfully sustained.

SOPHIA H. BONESTEEL.

JOHN WINSLOW,
Solicitor for Defendant.
J. N. VAN COTT,
Of Counsel.

STATE OF NEW YORK,
City of Brooklyn, County of Kings, ss:

Sophia H. Bonesteel, the defendant above named, being duly sworn according to law, deposes and says that the foregoing answer is true of her own knowledge, except as to matters therein stated on in-
54 formation and belief, and as to those matters she believes it to be true.

SOPHIA H. BONESTEEL.

Sworn to before me this 21st day of April, 1870.
D. C. WINSLOW, *Reg.*

(Indorsed:) U. S. *States* circuit court, eastern district of New York. James C. Voorhees, assignee, &c., vs. John N. Bonesteel & Sophia H. Bonesteel. Answer of Sophia H. Bonesteel. Van Cott, Winslow & Van Coot, def'ts' att'ys, 15 Nassau st., N. Y.

Service of a copy of the within answer is hereby admitted. May 4th, 1870.

COTTERILL BROTHERS,
Pl'ff's Att'ys.

Filed May 21st, 1870.

55 United States circuit court, eastern district of New York.

JAMES C. VOORHEES, ASSIGNEE, &c.,
vs.
JOHN N. BONESTEEL & SOPHIA H. BONESTEEL.

The above-named defendant John N. Bonesteel, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's bill of complaint contained, for answer thereunto, or to so much or such parts thereof as this defendant is advised are material for him to make answer unto, he answers & says, he admits each and every allegation on the third page thereof, to wit, that such orator has received the deed of assignment to him as such assignee, and that he has given notice of his appointment as such assignee.

And this defendant, further answering, says that he admits that the defendant Sophia H. Bonesteel, is his wife, and that she has,
56 standing in her name upon the books of the Nicholson Pavement Company of Brooklyn, a corporation duly organized under the laws of the State of New York, eleven hundred and forty-five shares of the capital stock of such company of the par value alleged in such bill of complaint, and that she hold' stock certificates therefor, but he denies that such stock is of the value of thirty thousand dollars, and avers that its value is less than one-third of such sum.

The defendant, further answering, denies that such stock is or ever was his property, or that he has or ever had any interest therein, and denies that it should have been included in his said inventory of property annexed to his said petition in bankruptcy, and denies that such stock should have been delivered to such assignee, or that it should be applied to the payment of such bankrupt's debts as in said bill alleged.

The defendant, further answering, says that the circumstances set forth & alleged in such bill, under which the said defendant Sophia H. Bonesteel, became possessed of such stock, are not correctly stated in such bill, and he denies each & every allegation of such bill in that behalf so far as the same are different from or inconsistent with the statement of such circumstances as hereinafter set forth.

57 The defendant, further answering, says that such 1,145 share' are the individual and separate property & estate of her, said Sophia, and ever have been, & avers that, for the purpose of promoting and advancing the same, she has from time to time paid out large sums of her own money to meet her share of necessary expenditures of said company to give value to such stock.

The defendant, further answering, says that at and previous to the time that he entered into the service of Jonathan Taylor he was and had been carrying on a dry goods commission business in the city of New York, as the agent and attorney-in-fact of the said Sophia H. Bonesteel, in her name and for her account & solely upon capital furnished by her, the same being money obtained by her from her father, Sherman Hartwell, of Bridgeport, Connecticut, & that the family of the defendant, including himself, his said wife, & their children had long been and then were living in a dwelling-house then and now owned & furnished by said Hartwell, and the same was wholly supported by means applied by said Hartwell in consideration of his love & affection for her, said defendant Sophia, and her said family, & by the profits of such dry goods commission business. That the sum so advanced by such Hart-
58 well in the manner & for the purpose aforesaid, if not repaid to

said Hartwell in his lifetime, it is understood & arranged by him and the defendant Sophia, are to be charged to her share in her said father's estate, which is greatly more than the amount of such advances. That such advances amount to more than the sum of twenty thousand dollars. That while the defendant Sophia was so engaged in such dry goods commission business, & was so employing such bankrupt therein upon capital so furnished by her said father as aforesaid, the services, aid, and influence of the said defendant Sophia, & through her the aid and influence of her friends were sought by said Taylor in the interest of said Nicholson pavement in the city of Brooklyn. That said Taylor and said defendant Sophia were old friends of many years, and the said defendant Sophia had at that time influential and wealthy friends of good position, who could aid in introducing such pavement in Brooklyn, of which fact said Taylor was then well aware. That said Taylor greatly desired the aid of the said defendant Sophia & of her said friends, and especially one of them, to wit, the Hon. S. B. Chittenden,
said defendant Sophia' brother-in-law, who was in a position to
59 be of great service in the matter, as said Taylor well knew, &
agreed with the defendant Sophia that if she would procure such influence & aid, he would give her a one-half interest in the license and right to lay such pavement in said city of Brooklyn & would give her said husband, to wit, this defendant, employment in promoting said pavement interest in the cities of New York and Brooklyn & elsewhere, which he, said Taylor, claimed & said would bring to the defendant Sophia a much better & larger income & support to her family than she was then receiving from her said dry goods business. That the actual value of such one-half interest in such license was at that time doubtful & wholly conjectural, & whether it would ever be of any actual value depended upon whether advantageous contracts could be procured to lay such pavement in said city of Brooklyn; that the defendant Sophia accepted said proposition of said Taylor, and did thereupon aid him by her personal exertions and services in all proper ways within her power in promoting such pavement interest in the city of Brooklyn, and did induce her said influential & wealthy friends to aid her in various
is so promoting and introducing such pavement in said
60 city of Brooklyn, & did consent to abandon and did abandon her
said dry goods commission business & devote her time & attention, & procure that of her friends & their interest as aforesaid to aid her in promoting and introducing such pavement as aforesaid; that thereupon and upon the acceptance of such proposition as aforesaid, in consideration thereof, said Taylor did, on or about the day of convey such one-half interest to the said defendant Sophia H. Bonesteel; & that without such acceptance of such proposition, & belief, on said Taylor's part, that the said defendant Sophia could be of very great service in promoting such pavement interest as aforesaid, he, said Taylor, would not have so conveyed such one-half interest to her as aforesaid.

That the defendant Sophia fully kept her part of such agreement in all respects & secured the active aid of her said brother-in-law, the Hon. S. B. Chittenden, who was the first to introduce such pavement in Brooklyn, by procuring a sample of the same to be laid in front of his own residence in Pierrepont street, Brooklyn, at his great expense, all
which aid and service was rendered as aforesaid to the satisfac-
61 tion of said Taylor, & received by the defendant Sophia in good
faith, & without any intent, thought, or purpose of defrauding said bankrupt's, this defendant's, creditors, or of wronging them in any way; that none of the money, assets, or property of said bankrupt was

used to procure such conveyance, nor was the same represented in any way in such one-half interest, nor is the same represented in any way in such 1,145 shares of such capital stocks now held and owned by the said defendant Sophia as aforesaid; and this defendant claims and avers that she, said Sophia, is legally, and justly, and *and* equitably entitled to claim and hold, & she does claim & hold the same as her separate & individual estate.

That such defendant Sophia, by her own exertions & through and by the aid of said bankrupt, as her agent, negotiated a sale for said Taylor of his other one-half interest in such license, and this defendant, the said bankrupt, had no interest whatever in such sale, nor anything to do with the same, except to act for and aid the said defendant Sophia in such negotiations as her agent.

That the said defendant Sophia, with the aid of this defendant, subsequently negotiated a sale of one-half of her own said interest for
62 the sum of $10,000, to wit, on or about the 3rd day of November, 1867, to William Smith & Company, & such bankrupt, this def't-dant had no interest in such sale or the proceeds thereof, and had nothing to do with the same, except to aid the said defendant Sophia, as her agent, in such negotiation; that such proceeds of such sale have long since been used & expended by the defendant Sophia in promoting her remaining interest in such pavement, & in the support of herself & family long before the filing of such bankrupt's, this defendants', petition in bankruptcy.

The defendant, further answering, admits, that afterward, such company was organized with the shares and capital in such bill alleged, & admits the issue of said stock as therein alleged, & says that this defendant Sophia received as her proper share of such stock 1,150 shares thereof, that being ¼ thereof, but denies that said bankrupt, this defendant, has sold 44 or any shares of such stock to Page, Kidder & Company, or to any other person or persons, for three thousand dollars, or for any price whatever, and alleges the fact to be that the defendant Sophia negotiated and made such sale of such 44 shares for the price of $2,000, and no more.

63 That this defendant admits that, since the filing of such petition, to wit, on or about the 15th day of October, 1868, she, said Sophia, transferred five shares of such stock as a gift to said bankrupt, this defendant, for the purpose of qualifying him to act as trustee in such company, to the end that her interests might better be protected & promoted.

The defendant, further answering, says that he was appointed superintendent of such company on or about the 5th day of November, 1867, and, as such, he admits he has been active in the management thereof, for which services, as such superintendent et al., he has received a salary.

That, as to what contracts such company has had, or whether the same have been profitable, this defendant is not able to state without a careful and extended examination of the books and accounts of such company, & the value of the fixtures, tools, & materials, & assets on hand, except to say that he is informed & believes that such company has had & performed sundry contracts with sundry commissioners in the city of Brooklyn, & that some of such contracts have yielded some profit, & some of them have entailed heavy losses; but what the net results are defendant is not able to state.

64 That no dividends have been declared to defendant's knowledge; that no contracts had been performed by such company,

nor profits received or earned, when defendant filed his said petition in bankruptcy; that this defendant admits that both he and said Sophia deny that such assignee has any claim, right, title, or interest in such stock or property, & that the defendant Sophia refuses to surrender the same or any part thereof to such assignee, & admits that the said Sophia claims the said 1,145 shares to be her sole and separate property, free from all claims of such assignee.

That this defendant verily believes that the defendant Sophia has not transferred, & has no intention of disposing of, or transferring, her said 1,145 shares, unless restrained by the injunction order of this honorable court, nor has he transferred his said five shares.

That this defendant makes no further answer to sundry of the interrogatories in such bill contained, for the reason that he is advised that it is not incumbent upon him so to answer, except so far as he has answered the same in his foregoing answer. As to any other matters in said complaint contained, not herein specifically confessed or
65 avoided, traversed, or denied, the defendant says that he has not sufficient knowledge or information upon which to form a belief, and therefore denies each and every allegation thereof; and this defendant submits to this honorable court that all and every of the matters in said complainant's bill mentioned and complained of are matters which may be tried and determined at law, and with respect to which the said complainant is not entitled to any relief from a court of equity; and this defendant hopes he shall have the same benefit of this defence as if he had demurred to the said complainant's bill.

And this defendant denies that such orator is entitled to any discovery on account, or to an injunction, or to the relief, or any part thereof prayed for by him in his prayer for judgement, or to any equitable or other relief or decree whatever.

All of which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in that behalf most wrongfully sustained.

JOHN WINSLOW,
Solicitor for Def't.

JOSHUA M. VAN COTT,
Of Counsel Def't.

66 STATE OF NEW YORK,
City of Brooklyn, County of Kings:

John N. Bonesteel, the defendant above named, being duly sworn according to law, deposes and says that the foregoing answer is true of his own knowledge, except as to the matters therein stated on information & belief; and as to those matters, he believes it to be true.

JOHN N. BONESTEEL.

Sworn to before on the 27 day of May, 1870.

A. B. THORN,
Notary Public Kings Co.

(Indorsed:) U. S. circuit court, eastern district of New York. James C. Voorhees, assignee, &c., vs. John N. Bonesteel & Sophia H. Bonesteel. Answer of John N. Bonesteel. Van Cott, Winslow & Van Cott, def't solicitors, 15 Nassau st., N. Y. Filed May 21st, 1870.

67 United States circuit court, eastern district of New York.

JAMES C. VOORHEES, ASSIGNEE, &c.,
vs.
JOHN N. BONESTEEL, SOPHIA H. BONESTEEL. } In equity.

The motion of the complainant for an injunction, &c., having, this 21st day of May, 1870, been brought on to be heard, this now, by consent of the counsel for the parties, ordered a writ of injunction issue enjoining the defendants as prayed for in the complainant's bill, with leave reserved to the defendants to move to vacate their order, and dissolve such injunction, should they be so advised.

Consented to.

COTTERILL BROTHERS,
For Compl't.

For Def't, Mrs. Bonesteel.

68 (Indorsed:) U. S. circuit court. James C. Voorhees vs. John N. Bonesteel et al. Order for injunction by consent. Filed & ent'd May 21st, 1870.

69 United States circuit court, eastern district of New York.

JAMES C. VOORHAS, ASSIGNEE IN BANKRUPTCY of John N. Bonesteel, bankrupt,
vs.
JOHN N. BONESTEEL & SOPHIA H. BONESTEEL. } In equity.

The replication of James C. Voorhees, assignee in bankruptcy of John N. Bonesteel, bankrupt, complainant, to the separate answer of Sophia H. Bonesteel, defendant, to the bill of complaint of the above complainant.

This repliant, saving and reserving to himself all and all manner of benefit and advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, says that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this that any other matter or thing whatsoever, in the said answer contained,

70 material or effectual in the law to be replied unto, confessed and avoided, traversd or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray, as in and by his said bill he has already prayed.

COTERILL BROTHERS,
Solicitors for Complainant.

71

72 (Indorsed:) U. S. circuit court, eastern dist. of N. Y. In chancy. James C. Voorhees, assignee, &c., against John N. Bonesteel & Sophia H. Bonesteel. Replication to answer of Sophia H. Bonesteel. Cotterill Brothers, complainant's solicitors. Filed May 31st, 1870.

73 United States circuit court, eastern district of New York.

JAMES C. VOORHEES, ASSIGNEE IN BANKRUPTCY, of John N. Bonesteel, bankrupt,
vs.
JOHN N. BONESTEEL & SOPHIA H. BONESTEEL. } In equity.

The replication of James C. Voorhees, assignee in bankruptcy of John N. Bonesteel, bankrupt, complainant, to the separate answer of John N. Bonesteel, defendant, to the bill of complaint of the above complainant.

This repliant, saving and reserving to himself all and all manner of benefit and advantage of exception to the manifold insufficiences of the said answer, for replication thereunto, says that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and
74 things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray, as in and by his said bill he has already prayed.

COTERILL BROTHERS,
Solicitors for Complainant.

(Indorsed:) Circuit court, eastern dist. of N. Y., in equity. James C. Voorhees, assignee, vs. John N. Bonesteel, Sophia H. Bonesteel. Replication to answer of J. N. Bonesteel. Cotterill Brothers, sol'rs for compl't. Filed May 31st, 1870.

75 U. S. circuit court, eastern district of New York.

JA'S C. VOORHEES, ASSIGNEE, &C.,
vs.
JOHN N. BONESTEEL AND SOPHIA H. BONESTEEL. } Before Hon. Benedict, J.

BROOKLYN, N. Y., *May 31st*, 1870.

J. P. C. Cotterill, esq., for plaintiff.
Jno. Winslow, esq., " def't.

Mr. Cotterill offered in evidence certified copy of petition filed by pl'ff in the U. S. dist. court for southern dist. of New York, in the bankruptcy proceedings, mentioned in the bill of complaint in this cause, and certified copy of the answer of Sophia H. Bonesteel to that petition; to which Mr. Winslow objected on the ground of irrelevancy.

Documents received, subject to the obj.

Mr. Cotterill then read a deposition of Charles E. Jenkins; also
76 the testimony of John N. Bonesteel and Sophia H. Bonesteel, taken under the 26th section of the bankrupt act, in the proceedings in bankruptcy, mentioned in the bill of complaint and read in the district court proceeding; also the deposition of Jno. N. Bonesteel, contained in the said district court proceedings.

SOPHIA H. BONESTEEL, sworn.

Examined by Mr. Cotterill:

Q. Where was your husband's place of business, while he was carrying it on, as your agent, before the interest in this license was got?

A. He had a desk at Fowler' & at Plumb & Co'.
Q. Where was that?
A. I could not give you the number; I should think it was in Chambers st.
Q. How long was he engaged in that business?
A. Two or three years.
Q. How much capital did you furnish him in that business?
A. Three thousand dollars.
Q. Is it not the $2,925 sum mentioned in your father's statement?
A. Well, yes; we called it $3,000. It was twenty-nine hundred & something.
Q. Was that business profitable or unprofitable?
A. It was unprofitable.
Q. This entire capital was sunk, was it not?
A. Yes, sir.
77 Q. Do you know the book kept by your husband in that business? [Hands a book to witness, Ex. "B," annexed to deposition of John N. Bonesteel, already read.]
A. It is in his handwriting.
Q. Do you know that this was one of the books kept by him in that business?
A. I suppose so. Yes, sir.
Q. Do you know that it was the last book kept by him?
A. I do not. No, sir.

JOHN M. BONESTEEL sworn.

Examined by Mr. Cotterill:

Q. Is that the book kept by you in your business as agent for your wife?
(Hands to witness book referred to in last witness' testimony.)
A. There are some entries in here, the major portion of them are not.
Q. Does not that book contain all the entries of your business during the time that it purports to relate to?
A. No, sir; it does not.
Q. Then you kept another book at the same time?
A. I kept a blotter. In the blotter I made entries of each and every purchase as the bills came in. Each and every sale was made on these bills. I find the greater portion of these are those referred to as
78 carried on by Mr. Derrickson & myself, in my previous examination read from this morning.
Q. Was that business profitable or unprofitable?
A. It was profitable and unprofitable, both. The results were unprofitable.
Q. When did you give it up?
A. In 1867. I am not so positive about that; I can't tell.
Q. What memorandum is that you refer to, to testify from?
A. To know when I gave it up. I was looking at this to see when the co. was organized.
Q. When do you find that you gave up that business?
A. I think in the winter of 1866 & 1867. I have got the impression; I have no memorandum about that at all.
Q. The winter of 1866 & 1867?
A. Yes, 1866.
Q. You have heard your testimony as read by me here to-day in the court-room?
A. Yes, sir.

Q. Are the statements contained therein correct?
A. Some portions you skipped out.
Q. So far as you apprehended it as read by me, were the statements correct? I read the entire portion of it except one page.
A. You skipped one Johnson's testimony.
79 Q. Well, so far as I read it, and you apprehended it, are those statements correct?
A. They are.
Q. Who is president of this co. now?
A. I am.

ISAAC T. FLETCHER sworn.

Examined by Mr. Cotterill:

Q. Are you one of the firm of Page, Kidder & Co.?
A. Of Page, Kidder & Fletcher, formerly Page, Kidder & Co.
Q. What connection have you, if any, with the Nicholson Pavement Co., of Brooklyn?
A. Secretary & treasurer.
Q. How long?
A. Virtually so, ever since the organization of the co. At some times the treasurership has been held by Mr. Kidder for a short time, & by Mr. Page, but the work has been done by me. I virtually have been secretary & treasurer since the organization.
Q. When did you' firm first acquire an interest in the license for laying the Nicholson pavement in Brooklyn?
A. I was not a member of the firm at the time the purchase was made, but directly after. I think the purchase was made in Dec. of 1866, & my connection with the firm commenced in January, 1867.
Q. Were you cognizant of the facts relative to that purchase?
80 A. I was cognizant of the purchase, and—I don't know what you mean.
Q. You were connected with the firm at the time the purchase was made?
A. I was in the employ of the firm.
Q. Who made the negotiation for that purpose?
A. That I can't say; I don't know. It had been purchased when my interest with th' firm commenced. I was *with Mr.* Orleans & came North in Dec'r.
Q. You were served with a subpœna to produce certain papers & contracts; have you the papers?
A. No; because I didn't know what might be required. I can give you the information probably that you want, or if necessary I can produce the books and papers. Our office is close by.
Q. How much pavement did this company lay in Brooklyn last year?
(Objected to. Excluded.)
Q. How much money have either Mr. or Mrs. Bonesteel received by reason of this ownership of the stock of this co. since the organization of the co., by reason of their being shareholders?
(Objected to. Question allowed.)

81 A. None; not a dollar.
Q. Has there been any money paid for them in any way, either directly or indirectly?
A. Paid on their account, or instead of, to them?
Q. For them or for their account, either directly or indirectly?
A. Not a dollar.

Q. Do you testify that they never have realized a dollar in money from this co.?

A. Not as shareholders.

Q. Have they realized any money otherwise?

A. Not "they;" but Mr. Bonesteel has been sup't of the co. and president, and has received money from the company as Mr. Bonesteel, but not as a shareholder.

Q. Has Mrs. Bonesteel received any money?

A. Not a dollar.

Q. Any person for her?

A. Not a dollar—no one.

Q. Has this co. ever made any profits?

(Objected to. Excluded.)

Q. As treasurer, do you receive & disburse all the moneys of the co.?

A. The accounts all pass through my hands; I don't absolutely receive every dollar of the co., but I am cognizant of all the amount.

Q. Of all the receipts and payments of the co.?

A. Yes.

82 Q. Has there been any payment made of any money belonging in any way to this co. upon any contract that this co. has had to lay this pavement, to any person whatever, on the ground of, or for the benefit of, Mrs. or Mr. Bonesteel, aside from what you have paid him as salary?

A. There has not been a dollar paid.

Q. Have any of these moneys been paid to anybody to be held by them, and to be paid over to Mr. or Mrs. Bonesteel, in case this suit terminates favorably to them?

A. Not a dollar.

EDWARD H. KIDDER sworn.

Examined by Mr. Cotterill:

Q. What was your business in Dec., 1866?

A. I was one of the firm of Page, Kidder & Co., engaged in the distillation of coal tar.

Q. Did your copartnership in that month & year purchase an interest in the license for laying the Nicholson pavement in Brooklyn?

A. Yes, sir.

Q. What interest did your firm purchase?

A. A quarter interest.

Q. Did any other firm purchase an interest at same time?

A. Yes, sir; Kidder & Martin, of North Carolina.

83 Q. Are you a member of that firm?

A. No, sir; my father is.

Q. Who did you negotiate with for the shares that your firm bought?

A. We had some talk, I think, with Mr. Bonesteel, with regard to our purchase; the matter occurred so long ago that my recollection of the whole affair is very dim; afterwards we went up into Mr. Taylor's office; the only part I recollect distinctly now, is going to the office of Mr. Taylor's lawyer, who, I think, was a California gentleman, and having the transfer made out; after that transfer there was another one made by Mr. Nicholson.

Q. Then you negotiated with Mr. Bonesteel, and you were present at Mr. Taylor's lawyer's office when the transfer was made?

A. Yes, sir, I was; I negotiated with Mr. Bonesteel; I had some talk with him; I don't think we made a direct negotiation with him; we may have asked him what Mr. Taylor would sell the quarter interest for, and he may have told us; something of that kind.

Q. How did you first know that Mr. Taylor had this license for sale, or was willing to sell any of it?

84 A. Well, in the nature of our business in selling coal tar, we were connected with all the paveing people in the country, and Mr. Taylor naturally would come to us in our line of business; he was seeing about putting down a piece of pavement in Nassau street.

Q. Was that the way you found out that Mr. Taylor had the license for sale?

A. As I said, I don't recollect any of the particulars about it; I could not swear whether I first saw Mr. Taylor or Mr. Bonesteel.

Q. (By Mr. Winslow.) You saw them both?

A. Yes; I think Mr. Bonesteel was working for Mr. Taylor at that time, & we sold coal tar to him.

Plaintiffs rest.

Mr. Winslow, for the defence, read the testimony of Jonathan Taylor, in the bankruptcy proceedings referred to.

SIMEON B. CHITTENDEN, sworn for the defence.

Examined by Mr. Winslow:

Q. You are a merchant, residing in Brooklyn?

A. Yes; doing business in New York.

Q. You live in Pierrepont street?

A. Yes.

Q. Do you know Mr. & Mrs. Bonesteel?

85 A. Yes.

Q. How long have you known them?

A. About 20 years—longer. Mrs. Bonesteel I have known her whole life; Mr. Bonesteel, about 20 years.

Q. Have you ever been connected in any way with Mrs. Bonesteel's family; if yes, in what way?

A. Preliminary to answering that, I would say that if you, with the consent of the court & the counsel, will allow me simply to tell my relation to the case I can, perhaps, get through quicker.

Mr. COTTERILL. I have no objections.

Mr. WINSLOW. Go. on.

WITNESS. Mr. Bonesteel married the sister of my first wife in 1848. He married his present wife in 1848 or 1849; was then in business in Chicago, & a customer of mine. Three or 4 years after it became apparent to me he was insolvent, & I told his wife's father that I thought so. A year or two later I told him he had better do no business with me. This was perhaps in 1855. From that time to 1859 Mr. Hartwell very frequently advanced money to him—as often as twice a year. When he came to New York to pay his debts he would advance

86 money to him to help him through the season. In 1859 he failed & made an assignment. Through some bad advice he made a faulty assignment, & the assignment was broken. A year or two later he came to New York, Mr. Hartwell furnishing him money to pay his board. He had no occupation. I should think he came to New York in 1863. After he had been there boarding, her father furnishing her money for the support of the family a year or longer, he began to do what I call a brokerage dry-goods business. He came and bought them of me. I knew that he was bankrupt, and we never delivered goods until he paid for them; & at that time I recommended my firm not to sell him goods except that way. He was my brother-in-law, but I refused to allow my

firm to sell him goods on any other condition, because I thought somebody might attach them. I knew that his father-in-law was furnishing money for his support. He took this office in Chambers street. I knew it. Sometimes he would make, he said, $500, & sometimes he would tell me of purchases that I told him he would lose $5,000 on. I think within the last year, while pursuing this business, his father-in-law wrote me a letter stating that he had concluded, at the request
87 of John's wife, to advance him another $3,000, and he ordered me to pay the money over to him, which I did, and I wrote him that he would lose it; that I didn't think he would ever be able to return it. He said, "I do it for my daughter." I paid the $3,000.

Q. When did you first hear of the Nicholson pavement in connection with Brooklyn?

A. Sometime in the year 1866, standing in the sub-treasury building. I saw Mr. Bonesteel then. I went immediately to him and asked him what he was about. I asked him where the pavement came from, and what the merits of it were. He told me about it, and I asked him to come to my office & talk to me about it. After hearing his story, I said "John, you were always wild. I don't believe it, but I would investigate it." I sent to Chicago & Milwaukee, wrote to those gentlemen to whom he referred me, & made enquiries.

Q. Had you heard at this time of the proposition to introduce it into Brooklyn?

A. Possibly not, but my impression is that I made the suggestion.

Q. Did you have any interview with Mrs. Bonesteel on the subject?

A. I was in the habit of visiting her constantly, and talked with her about it frequently.

Q. What did she propose to you about it, if anything?

88 A. I don't know that she proposed absolutely anything to me in the early part of it.

Q. At any time, about introducing it?

A. According to my recollection, I said if I can ascertain that this is a good pavement for Brooklyn I will do all I can for it; and I also said, if I do it, Mr. Taylor ought to give you at least a half interest in it.

Q. Had she then expressed a desire to have you aid her in the matter?

A. She at first expressed a strong disinclination to have her husband have anything to do with it, because she had no faith in it.

Q. Later was her opinion changed?

A. When I became satisfied it was a good pavement, she was very glad to have my assistance.

Q. What was your understanding of the object of your assistance. (Objected to.)

Q. You did finally assist in introducing the pavement into this city?

A. I laid it in front of my own property, and in front of my neighbor's property, both sides of the street, at my own expense.

Q. Why?

A. Because I believed that it was the best pavement that could be possibly devised for Brooklyn.

Q. How, in your mind, was that to benefit Mrs. Bonesteel?

89 A. My manner of it was that I told her husband & told her that, in consideration of the advocacy which I could give it, & which the newspaper which I had the management of———. I wish it to be distinctly understood, however, that in Mr. Bonesteel's testimony there is a slight inaccuracy so far as my position is concerned. I never made an absolute condition with Mr. Taylor Mrs. Bonesteel should have half of this. The only honest condition for me was that it

was a good pavement, but I also insisted and urged, if he was a reasonable man, that the least he could do was that he could give her half the interest, but I did not make that a condition.

Q. Did you have occasion to confer with Mr. Taylor on the subject?

A. He called upon me in respect to it, but the most of the negotiations were through—I made him a proposition through Mr. Bonesteel. I told him to say I would give so much for laying the pavement at my place, 100 feet, and was satisfied that it was a good pavement I would aid him.

Q. Your object was to aid Mrs. Bonesteel?

A. Yes, sir; I had a double object. I believed it was a good pavement, and to aid her.

90 Q. You knew she was embarrassed somewhat by her husband's difficulties?

A. I knew perfectly well that her family were living at the expense of her father.

Q. You knew that they were living at her father's house?

A. In her father's house, and I had reason to suppose that he had never returned any of the money that he had received from many years, which I think he once said to me had amounted to $30,000.

Q. Did Mrs. Bonesteel confer all along with you as her adviser in reference to the managemant of the business?

A. My impression is that nothing important was done in the matter without consulting me. She came to me for the money, and with Mr. Smith's notes, and when she required money she came to me.

Q. So that she took an active part in the matter herself?

A. I knew that she took an active part in it, as much as any lady would who trusted in her husband and confided in his good intentions.

Cross-examined by Mr. Cotterill:

Q. You first saw this pavement when it was being laid in Nassau street?

91 A. Yes, sir.

Q. That was in the summer of 1866, was it not?

A. I will not locate the time. It was at the time it was being laid.

Q. Do you know how long that was before this half interest was transferred to Mrs. Bonesteel?

A. I do not, sir.

Q. You refused to do anything about it until you had written to parties West, to see as to the value of the pavement?

A. Yes, sir; I refused until I was convinced that it was a good pavement.

Q. And I understand you to say that you were very much actuated by a desire to introduce a good pavement in Brooklyn, irrespective of any other consideration?

A. I was aware that we needed a good pavement, or that our city was in want of it.

Q. And you would have done nothing about introducing it till you were satisfied that it was good?

A. No, sir.

Q. When you came to lay the pavement in front of your house who paid the expenses?

A. I paid for it.

Q. The whole of it?

A. Yes, sir.

Q. How much did you pay?

92 A. I stated that I paid a certain number of hundred dollars for it. I said to Mr. Bonesteel, tell Mr. Taylor I will pay so many hundred dollars for that.

Q. Do you know what it cost to lay it?

A. My books will tell.

Q. You said that you said to Mrs. Bonesteel that she ought to have half; who did you suppose at that time was to have this right for Brooklyn? Who was to have the other half?

A. I was asked to buy an interest in it, and refused to give $100 for the whole of it. I had a doubt whether it was worth $100. I was well aware of the difficulties of introducing matters of this kind into a city of this kind.

Q. You say that you said that Mrs. Bonesteel you thought ought to have half; now who was to have the other half?

A. Mr. Taylor owned the whole. My argument was this to Mr. Bonesteel: Mr. Taylor owns the whole; by your industry you may possibly work up something; if you do it is fair that he should give your wife a half interest, I said to Mr. Bonesteel.

Q. Then you expected that Mr. Taylor & Mrs. Bonesteel would go on together?

A. I presumed that Mr. Taylor would sell out if he could, & as
93 quick as he could. I presumed that he was a speculator. I didn't know anything about it.

Q. You can't locate the time when you had these conversations with Mr. Taylor?

A. No, sir; it was that year sometime.

Q. How many conversations did you have with Mr. Taylor?

A. I believe 2; perhaps only 2.

Q. To what effect?

A. We talked on various subjects. I told him, as I told everybody, I believed it was a good pavement, but I doubt whether there was any money to be made in it.

Q. Did you say anything about your influence?

A. I told him I was willing to advocate it, and I did advocate it. I gave instructions to the editor of the Brooklyn Union to get all the information he could on the subject, & to advocate it as strongly as the facts would admit of.

Q. Was there anything ever said by you, or in your presence, relative to this interest being transferred to Mr. Bonesteel?

A. Never a word.

Q. Or to Mrs. Bonesteel, in preference to being transferred to him?

A. It was distinctly understood that Mr. Bonesteel was a bankrupt, and it would be of no use to put it in his name, & if it was transferred at all, I understood that Mr. Taylor gave it to Mrs. Bonesteel as he would a silver cup to her child.

94 Mrs. BONESTEEL recalled.

Exam'd by Mr. Winslow:

Q. Is your father living?

A. Yes, sir.

Q. How old is he?

A. He will be 80 next Dec.

Q. And somewhat infirm?

A. No, sir.

Q. Well, a little old?

A. Well, not infirm for a man of his years. I thought you mean; comparatively,

Q. What has been his business in Bridgeport?

A. President of the Bridgeport Bank.

Q. He has been in the habit of assisting you for years back?

A. Yes, sir.

Q. And the house that you live in in Brooklyn is his?

A. Yes, sir.

Q. From the beginning to the end did you hear a word said by anybody in these conversations—your husband or any body else—that the object of this transfer to you was to wrong Mr. Bonesteel's creditors?

A. No, sir; never heard it said or thought of.

Q. Did any of Mr. Bonesteel's money go into this stock at all?

A. No, sir.

Q. You heard Mr. Chittenden's statement in reference to getting his aid in the matter?

A. I didn't hear all of it.

95 Q. He said that he, after looking at the merits of the pavement, agreed to aid you in introducing it here in Brooklyn; you remember that?

A. Yes, sir.

Q. Did he make all the effort that he said he would make?

A. Yes, sir; I was satisfied with the effort that he did make.

Q. Was Mr. Taylor satisfied with it?

A. I think he was.

Defendant's rest.

96

97 [Examination of bankrupt or witness relative to the bankruptcy. Form No. 46. S. Bradford, print, 147 Fulton st.]

No. 890.

In the district court of the United States for the southern district of New York.

IN THE MATTER OF JOHN N. BONESTEEL, bankrupt. } In bankruptcy.

At the office of the register, at No. 57 Broadway, in the city of New York, in said district, on the 29 day of May, A. D. 1869, before Mr. Isaiah T. Williams, one of the registers in bankruptcy of said court.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

JONATHAN TAYLOR, of New York City, in the county of New York, and State of New York, being duly sworn and examined at the time and place above mentioned, upon h' oath says: (Examined by Mr. Winslow, of counsel for bankrupt; cross examined by Mr. Cotteril on behalf of creditors.)

98

99 (The testimony on behalf of the assignee is closed with the exception of W'm Fletcher.)

I reside in the city of New York, formerly of Milwaukee. I am connected with the Nicholson pavement.

1. Quest. Do you know Mrs. Bonesteel, the respondent?

A. Yes, sir.

2. Q. How long have you known her?

A. 16 or 18 years.

3. Q. Have you, at any time, conveyed to her any interest in the Nicholson pavement?

A. I have.

4. Q. When?

A. I think it was in December, 1866 or 1867; I don't recollect which; I think in 1866.

5. Q. What was the interest so conveyed?

A. One-half individual interest of my right to lay the pavement in Brooklyn, subject to a royalty of 16 cents.

6. Q. This was a right you got from Nicholson?

A. Yes, sir.

7. Q. Please state under what circumstances you made that conveyance to Mrs. Bonesteel?

A. The circumstances were these under which I conveyed it to Mrs. Bonesteel: When I came here first I was an entire stranger in the city. Being intimately acquainted with Mr. Bonesteel and Mrs. Bonesteel too, and desiring to get the influence of her and her husband, and other influential parties, I made up my mind to give her one-third interest
100 of Brooklyn at that time, (as I made up my mind that it was my interest to give it to her,) and procured that influence by so doing, and did so. In December, 1866, at the time Mr. Bonesteel made the sale of the one-half to Page, Kidder & Co., the other interest between the one-third and one-half I conveyed to Mrs. Bonesteel, making one-half interest to her.

8. Q. During this negociation and arrangement did you have interviews with Mrs. Bonesteel on the subject.

A. I did one; it was at Mr. Bonesteel's house, in the latter part of June or beginning of July, 1866.

9. Q. State the subject of that conversation.

A. The substance of the conversation was: Mr. Bonesteel had been exerting himself with me, going round and seeing parties for a month or more in reference to introducing the pavement. She felt uneasy and unsatisfied about his neglecting his own business and running round for me about the Nicholson, which would amount to nothing she was afraid. I impressed upon her that it was a good thing, provided I could get certain influences to help me along. She stated that she had let him have some money to engage in business in, and that neglecting that she would lose, and not make anything out of the pavement. I told her I was satisfied that she would make four times as much out of the
101 pavement as Bonesteel would make in trafficking in goods. Mr. Bonesteel was not present at the time.

10. Q. How did you expect to obtain these certain influences you speak of?

(Objected to by Mr. Cotteril, counsel for creditors. Objection overruled. Exeeption.)

A. Through her help, and should not have conveyed it, if I had not *of* got that influence.

11. Q. Will you mention some of the influential friends, whose influence you expected to get through her?

(Objected to as above. Objection overruled. Objection.)

A. S. B. Chittenden; that was the only person whose influence was wanted.

12. Q. What relation was Mr. Chittenden to Mrs. Bonesteel, if any?
A. Mr. Hartwell told me that Mr. Chittenden married his daughter, and Mr. Bonesteel another; this he told me in 1860.
13. Q. Had you any understanding or arrangement with Mrs. Bonesteel, or with Mr. Bonesteel, or with any person that this interest should in fact be Mrs. Bonesteel's?
(Objected to as above. Ojection overruled. Exception.)
A. I had none.
14. Q. Did you consider Mr. Chittenden's interest important to you; and if so, state why?
(Objected to as above. Objection overruled. Exception.)
102 A. I did, because I thought it of great importance, and would not have conveyed the interest if I had not *of* thought so, and got that influence. I thought his influence was important as he was rich, and a prominent man in Brooklyn.
15. Q. Do you know whether Mr. Chittenden was connected with any paper in Brooklyn at that time?
A. I think I heard that he had control or interest in the Union over there. I don't know whether he had or not.

Cross-examined by Mr. Cotterill:

16. Q. Had you not been, for several years prior to this assignment to Mrs. Bonesteel, aware of the fact that Mr. Bonesteel had failed, and was insolvent?
A. I had been informed so.
17. Q. Had you not talked with him on the subject?
A. Yes; I had.
18. Q. When had you talked with him about it?
A. In 1860.
19. Q. Did you not talk with him about it after 1860?
A. I don't recollect I ever did.
20. Q. When the transfer was made to Mrs. Bonesteel, did you not say to him that you knew he was in debt, and that if the interest was transferred to him, his creditors would reach it?
A. I did not in that way.
21. Q. In what way did you say it to him?
103 A. I said to Mr. Bonesteel when he insisted upon my giving the interest between the third and the half, that I wanted to keep it myself, and should not let his wife have it, but upon his urging matters I told him that I would not give it to him, but to his wife, as I did the other, for he was in debt, and if I did, his creditors would get it, and that I had nothing to give them. I had not previously conveyed the one-half to his wife, but had made up my mind to give it to her as promised, and therefore considered it as given. I had intended to retain for myself the difference between the half and the third, but when I came to make a transfer of the one-half to Page, Kidder & Co., he urged that I should give the whole of the other half to her, instead of the third, claiming that it was through Chittenden's influence that I sold the half of Brooklyn for what I got, and I thought it was, and I did so. I made no conveyance in form, or otherwise to her except of the one-half in December, 1866.
22. Q. If Mr. Bonesteel had not been in debt, would you not have assigned the interest directly to him?
A. I should not.
23. Q. Why, then, did you state to him that he was in debt, and that if you made any transfer to him that his creditors would reach it?

104 A. I might have conveyed that part between the third and the half, if he had not been in debt. I may and may not. Can't tell.

24. Q. Why did you state to him that if you made any transfer to him, his creditors would reach it.

A. I don't know what made me make the remark. Knowing that he was in debt, I suppose, made me make the remark. It was from no suggestion made by him, that caused me to make the remark.

JONATHAN TAYLOR.

Read over and subscribed to before me.

I. T. WILLIAMS, *Register.*

A true copy of the original on file.

[SEAL.] GEO. F. BETTS, *Clerk.*

(Indorsed:) 890. U. S. district court, southern district of New York. In the matter of John N. Bonesteel. Copy testimony of Jonathan Taylor on reference.

105 In the district court of the United States for the southern district of New York.

IN THE MATTER OF JOHN N. BONESTEEL, BANKRUPT. } In bankruptcy.

At No. 57 Broadway, in the city of New York, in said district, on the 7th day of April, A. D. 1869, before Mr. Isaiah T. Williams, one of the registers in bankruptcy of said court.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Examination under special order of the court.

CHA'S E. JENKINS, of New York City in the county of New York and State of New York, being duly sworn and examined at the time and place above-mentioned, upon his oath says:

87. Q. How long have you known John N. Bonesteel, the bankrupt, and Jonathan Taylor?

A. Well, I have known Mr. Taylor 24 years, and Mr. Bonesteel probably 20 years. I don't remember when my first acquaintance with him commenced.

106 88. Q. How long have you resided in New York City?

A. Ten years.

89. Q. Do you know when Mr. Taylor came to New York to reside?

A. Yes.

90. Q. When was it?

A. In the spring of 1866.

91. Q. Did you become interested with him in the license for laying the Nicholson pavement in New York City; and if so, when?

A. In May, 1866.

92. Q. Did any other party become interested at the same time?

A. Mr. W'm T. B. Mellican.

93. Q. What interest did you and Mr. Mellican have in the license?

A. One half.

94. Q. From May, 1866, and for a year subsequent, where did Mr. Taylor have his office?

A. Well, when in the city he always had his office at my office, from that time until the present.

95. Q. When was the first pavement laid in New York City?

A. In the latter part of August, 1866; I think they commenced work on the 22d day of August, 1866, in Nassau st.

96. Q. State what other pavement was laid in the city during that year.

A. Hanover street was paved from Wall to Exchange Place,
107 Water street was paved from Pine to some other street——
Mr. Bonesteel, what street was it?

Mr. BONESTEEL. I don't exactly know—

A. Mr. JENKINS. And also in Exchange Place from New to Broad street. That was all that was laid that year, in 1866, in this city, I think.

97. Q. What did Mr. Bonesteel have to do with the laying of that pavement?

A. He superintended the laying of the pavement. Mr. Bonesteel was the superintendent of Mr. Taylor. I think all that pavement was laid under Mr. Bonesteel's superintendence.

98. Q. Did you have any conversation with Mr. Bonesteel prior to December, 1866, in reference to an assignment to him or his wife of an interest in the license for the laying of this Nicholson pavement in Brooklyn?

A. I had several conversations with Mr. Bonesteel during the fall of the year, 1866, upon that subject.

Q. State what those conversations were.

(Objected to by counsel for respondent; waived for the present.)

Q. Did you have any conversations with the bankrupt on or shortly preceding December, 1866, relative to a transfer from Jonathan
108 Taylor of an interest in the license for laying the Nicholson pavement in Brooklyn.

(Counsel for the bankrupt objects. Objection overruled. Exception taken.)

A. Yes.

Q. State the conversation?

A. I had several coversations with Mr. Bonesteel about the time that Mr. Taylor transferred his interest in Brooklyn. Mr. Bonesteel requested me to use my influence with Mr. Taylor to get him to convey to him one-half of his interest in the Brooklyn license, stating that he thought his services entitled him to at least one-half, but thought Mr. Taylor only proposed to give him one-third. I told him I thought he ought to have one-half and that I would do what I could for him. That is the substance of the conversation. We had several conversations all of that tenor.

99. Q. State whether in those conversations or in any of them, he said anything, and if so, what, in reference to an interest in Brooklyn being transferred to his wife.

A. I have no recollection that Mr. Bonesteel ever mentioned his wife at all; I am certain he did not.

109 100. Q. In the last question but one, you have used the expression, referring to Mr. Bonesteel, "his services." What services were they?

A. His services as superintendant in laying pavement in New York City and in introducing it in Brooklyn, and also in procuring Page, Kidder & Co. to buy one-half of Mr. Taylor's interest in Brooklyn.

101. Q. When was the amount of the interest that was to be transferred for his services, fixed upon?

A. I can't give the precise date; it was about the time of the transfer,

but the date of the transfer I do not remember. It must have been in December. Mr. Taylor left shortly afterwards for the South. If dates are of any account I could refresh my memory.

102. Q. State whether Mr. Taylor communicated to you what proportion of the interest he proposed to assign for the services of Mr. Bonesteel; whether you communicated that Mr. Bonesteel; and if so, what reply, if any, he made to it?

A. Mr. Taylor did not state; but I cannot answer that question. I told Mr. Bonesteel that Mr. Taylor had stated to me that he intended to give him (Bonesteel) one-third of his Brooklyn license or, in
110 lieu of that if he did not like to take that, he would give him a salary of so much a month for his services. Bonesteel replied that he ought to have half of the Brooklyn interest, and I backed him up, that is all; that is substantially all.

103. Q. In what business was Mr. Bonesteel engaged for the 3 months prior to December, 1866?

A. In the Nicholson pavement business.

104. Q. Was he engaged in any other business, to your knowledge?

A. No; I think he was exclusively engaged during the spring & summer of 1866. He was the most active man connected with the pavement in New York, except myself, and perhaps he was as active as I.

105. Q. Did you see him daily during that time?

A. Well nearly so, almost daily.

106. Q. In what place did you see him daily as you stated?

A. I saw him at my office frequently in reference to the work in New York. I never saw him in Brooklyn at all. I have not been over to Brooklyn for a long time. I never saw any of the pavement there.

107. Q. Were not his headquarters at your office?

A. So far as I know they were, in relation to the pavement.
111 108. Q. How often was he there?

A. Well I should say Mr. Bonesteel was there, on an average, three times a week; perhaps oftener.

109. Q. Did he have any other place of business, to your knowledge?

A. You mean during the three months; I do not know; I think not; I am not positive.

CHA'S E. JENKINS.

Subscribed and sworn to before me having been read over this 22d day of June, 1869.

I. T. WILLIAMS,
Register.

112

113 United States district court, southern district of New York.

IN THE MATTER OF JOHN N. BONESTEEL, bankrupt. } In bankruptcy.

In the matter of the petition of James C. Voorhees, assignee, against Sophia H. Bonesteel.

The parties to the issues made herein, upon the petition of James C. Voorhees, assignee herein, and the answer of Sophia H. Bonesteel thereto, upon which an order was made on the 2d day of March, 1869,

referring said issues to I. T. Williams, esq., register in bankruptcy, to take the testimony of either party relative to said issues, do hereby stipulate to admit, and do hereby admit, the following as facts relative to said issues the same as if formally proved before said register, to wit:

1st. That the said petitioner, James C. Voorhees, is the assignee of the above-named bankrupt in these proceedings; that his appointment as such has been duly confirmed by this court; that he is acting as such assignee, and has received the deed of assignment provided for in the bankrupt act.

2d. That, in or about the year 1866, Samuel Nicolson was the
114 patentee of letters-patent for laying the so-called Nicolson pavement, and had assigned to Jonathan Taylor the exclusive license of laying the same in the city of Brooklyn.

3d. That said Taylor assigned his said license to Sophia H. Bonesteel and others on the 7th day of December, 1866, the assignment granting one-half of said license to Sophia H. Bonesteel; and that said Nicolson, on the 10th day of May, 1867, also executed to said parties a confirmatory license for said city of Brooklyn, also vesting one-half thereof in said Sophia N. Bonesteel.

4th. That the Nicolson Pavement Company of Brooklyn was organized on the 5th day of November, 1867.

That debts mentioned in the bankrupt's schedules have been proved herein, amounting to five thousand dollars and upwards; that the bankrupt's schedules include debts to the amount of forty thousand dollars and upwards; that they include no assets, except a note against one Derrickson, which is worthless; that no assets have come to the hands of the assignee herein, except said note; that said schedules do not include the stock in controversy in this proceeding; that all the debts of the bankrupt, except a debt in favor of John R. Fame, for about $25, were contracted prior to 1866, and nearly all prior to 1860; that the
115 petitioner has been bankrupt and insolvent *and insolvent* since 1859.

5th. The counsel for the assignee having called as a witness John N. Bonesteel, and he having already been examined in these proceedings in bankruptcy, under the 26th section of the bankrupt act, it is consented that he need not be reëxamined upon any matters embraced in said issues upon which he has already been examined under said 26th section; but that such portions of his examination already taken as is deemed by either of the parties to be material to the said issues, be taken as his testimony upon said issues the same as if the several questions were again asked him, and his answers again given, either party, however, to be at liberty to examine him further relative to said issues.

6th. That the annexed is a copy of that portion of said bankrupt's examination deemed by either party to be material to said issues, and said copy is to be used on the hearing herein, in lieu of the original, as matter of convenience, and to save the necessity of separating such portions of said examination as are material to the issues from those that relate to other matters.

7th. The said Sophia H. Bonesteel having already been examined in the proceeding under the 26th section of the bankrupt act,
116 it is consented that her examination thus taken be used as her examination upon the said issues the same as if the questions

had been repeated and her answers taken thereto, either party to be at liberty to examine her further relative to said issues.

March 29, 1869.

COTTERILL BROTHERS &
F. G. McDONALD,
Sol'rs for Assignee.
M. J. BUTLER,
Sol'r for Sophia H. Bonesteel.

Examination by counsel for creditors, June 5th, 1868:

Answer to Q. 11. I am, at present, superintendent of the Nicolson Pavement Company, Brooklyn. It is a stock company: James W. Smith, president, Greenpoint; Isaac D. Fletcher, secretary, corner Montague & Clinton streets; George S. Page, treasurer, Chatham, New Jersey. Mr. Kidder is to be the treasurer; he resides on Joralemon street between Furman & Hicks. I receive a salary of $4,000; it is paid whenever I call for it, weekly. That company owes me for services for the month of June and part of May, 1868, $166 00. They are not in arrears to me. That is all they owe me up to the present time. Samuel Nicolson was the original owner of the right to lay Nicolson pavement in Brooklyn. He transferred that right to Jonathan Taylor, of Milwaukee.

117 He transferred it to George S. Page, Edward H. Kidder, Theodore L. Page, Isaac D. Fletcher, Ed. Kidder, Silas Martin, George Kidder, and Sophia H. Bonesteel, of Brooklyn. At a subsequent day the conveyance from Taylor to these parties was surrendered and delivered up. Then Mr. Nicolson executed the papers direct to these same parties. One-half interest in the city of Brooklyn was conveyed to Mrs. Bonesteel. Taylor had a right, and did lay pavement in New York. I have been his friend for 20 years. I did not become acquainted with him through my wife. About 3 years next August he laid the first pavement in New York. I was in his employ while he was laying the pavement in New York three years ago next August, (1868,) obtaining contracts and laying pavements—making purchases. Was in his service until the fall came on, and we couldn't work any longer. He paid me during that time.

12. Q. What compensation, if any, did Mr. Taylor give you for your services during all that time?

A. I realized over $1,000. Mr. Taylor was a stranger in the city, and was anxious to introduce the pavement here, and, at the same time, had a large contract at Elmira, N. Y.; &, knowing that I had many

118 aequaintances and friends here who could be of assistance to me in the obtaining of contracts, wished me to secure contracts for the purpose of introducing the pavement, at the same time showing me that there was a good profit in the work; that if I would devote and give my time to it, I should have all the profit realized therefrom and realized over $1,000. He never gave me any other compensation for my services, either directly or indirectly. I don't know whether Mr. Nicolson received any compensation from the parties I have named other than that Taylor had already conveyed. Mr. Taylor's assignment could not be placed on record, and his title was imperfect, and they preferred the assignment directly from Mr. Nicholson.

13. Q. One of the parties to whom the assignment was made, Sophia Bonesteel, is your wife, is she not?

A. She is.

14. Q. What consideration did she give, if any, for the assignment of the one-half interest to her of the right to lay the Nicolson pavement in Brooklyn?

A. Consideration expressed in the conveyance of one dollar, and the friendly relations that had existed between her and Mr. Taylor for many years.

15. Q. Was the $1 00 mentioned in the instrument of assignment actually paid to Mr. Taylor?

A. I cannot state.

119 16. Q. Who drew that instrument of assignment?

A. I cannot state; I was Mr. Taylor's lawyer or counsel.

17. Q. When was it delivered?

A. In this lawyer's office in New York, my impression is, in Pine street, or Cedar street.

18. Q. Who was present when it was delivered?

A. Mr. Taylor, I think, Mr. George S. Page, Mr. Edward Kidder, & myself; I do not recollect whether there were others or not.

19. Q. To whom was this assignment delivered?

A. The assignment was delivered to all parties present, it being one instrument; I think handed to Mr. Kidder.

20. Q. Did the parties have more than one meeting in relation to this assignment?

A. I think but one, and that is the one I have first spoken of; there were antecedent meetings by way of negotiations, which, when completed, ended in this meeting mentioned, by appointment.

21. Q. Was Mrs. Bonesteel present at any of these interviews, that you know of, in reference to this transfer?

A. I can't answer that question as you give it; Mr. Taylor had interviews with Mrs. Bonesteel at the house; she was not present at the interviews.

22. Q. Were you present at any of such interviews between Mr. Taylor and Mr'. Bonesteel?

120 A. I was.

22½. Q. Will you state what was said by either or both Mr. Taylor & Mrs. Bonesteel in reference to this assignment?

A. I have no reply to make; I don't recollect.

23. Q. Can you recollect nothing that was said by either of them at any of such interviews?

A. I have no further answer to make.

24. Q. If, then, you cannot recollect anything that was said by either party at any interview, how do you know that Mr. Taylor made the asigument to your wife from the friendship existing between them?

A. Because I read the assignment.

25. Q. Is that the only source of your knowledge upon the subject?

A. Nothing more than from the information and statements received from Mr. Taylor.

26. Q. Are those the only sources?

A. I don't recollect any other at present.

27. Q. When, and where, and to whom did Mr. Taylor make these assertions?

A. I couldn't state to whom he has made them; he has made them to me.

28. Q. Was any one else present when he made the assertions to you?

121 These parties were all present, and his counsel was present at the execution and delivery of the papers; they all heard it; it was loud enough for every one to hear; the papers were read by all; Mr. Taylor had directed his counsel to have those papers ready for execution, and they were executed when the parties all came together.

29. Q. What did Mr. Taylor then say on this subject?

A. I don't know as he said anything in reference to that particular question of yours; the conversation was general.

30. Q. Did he or not say anything on the subject of the assignment being in consideration of his friendship for Mrs. Bonesteel?

A. I do not recollect, as it was between 2 and 3 years ago.

31. Q. Do you recollect any occasion on which Mr. Taylor made these declarations which you have referred to?

A. I cannot recollect, other than those given above.

32. Q. Will you state any declarations of friendship for your wife he made in connection with this assignment, giving his words, or
122 the substance of them, which he used, other than that in the assignment?

A. Feeling interested in my wife and family for many years previous to our coming to this city, my wife and her father having lost by my moneyed operations, and she maintaining her family out of her property, he wanted her to make money out of this interest, and thought, by proper energy being thrown into it, the money could be made; something like that.

34. Q. Question repeated.

A. I have nothing more to answer, these interviews and conversations having taken place between 2 and 3 years ago.

35. Q. When was the subject of this assignment to your wife first mentioned by Mr. Taylor?

A. Between 2 & 3 years ago.

36. Q. To whom did he first speak of it—to you or to your wife?

A. I cannot say.

37. Q. What was said at that first occasion?

A. Mr. Taylor was constantly calling on me at my place of business, and taking up my time in calling upon influential parties & property-owners; I said to him that my wife had furnished to me several thousand dollars in money to use in the purchase and selling of m'd'se,
123 to assist in the making of money to maintain the family, and I did not feel it was right or proper, under the circumstances, to give up so much of my time, and he said she should not be made the sufferer by the misappropriation of my time.

38. Q. Was it in pursuance of this that he made the assignment to your wife?

A. I so considered it, and more particularly so by giving so much of my time in assisting Mr. Taylor; I both held my goods for some time, and afterwards consigned them to parties to sell, the busy season being over, they charging their commissions & expenses for selling these same goods which I would have sold, which finally resulted in a loss to her of several thousand dollars. I do not remember if this was the first conversation we had about ; I called his attention severel times to taking so much of my time.

39. Q. Did you never say to any one, on any occasion, that Jonathan Taylor had given you a half interest in the right to lay Nicolson pavement in Brooklyn?

124 A. I think very likely; I think likely I have said so a great many times.

40. Q. Do you recollect any person to whom you have so said?

A. I do not.

41. Q. Will you say yes or no whether you have said so to any one?

A. Yes; I have.

42. Q. Did you so state to John R. Fame?

A. Yes; and to a great many others.

June 19th, 1868. Examination resumed.

99 Q. What time did you first enter into the service of the Brooklyn Nicolson Pavement Company?

A. July, 1867.

100. Q. Did your salary begin at that time?

A. It began at that time, at $3,000 per annum; it was that up to October, 1867; it might have been in May, 1867, when I first went to work for the company; after October, 1867, my salary was $4,000 per annum; I do not think the company was indebted to me on the 28th February, 1867—in fact I know they were not.

101. Q. Has your salary always been paid at regular intervals?

A. No, sir; it has always been paid when called for.

102. Q. How much in arrears has your salary been at any one time?

125 A. I could not say, for the reason that my wants have been such that I have been obliged to call for it; I think it has been a month in arrears; it has not been over two months.

103. Q. Did you not state to John R. Fame in my presence, or any other time, that Jonathan Taylor had given you one-half interest in the right to lay Nicolson pavement in Brooklyn in return for what you had done for him in and concerning the laying of Nicolson pavement in New York City?

A. I don't know; I may have said so.

Cross-examination by counsel for bankrupt:

108. Q. What consideration was actually paid to Jonathan Taylor, in consideration of which the conveyance was made by Mr. Nicolson to the Brooklyn parties?

A. $10,000 00.

109. Q. Of that did your wife pay any part?

A. She did not.

110. Q. You spoke of taking contracts for Mr. Taylor. Did you ever take any in your own name?

A. No, sir.

111. Q. Previous to engaging in the pavement business, while you were engaged in the dry-goods business, were you acting in your own behalf? If not, how?

126 A. I was acting—I was buying and selling goods for my wife, with her money, and sometimes, when making large purchases, bought the goods when credit was obtained in the name of her father, Sherman Hartwell.

112. Q. Did you, at any time, use any capital except your wife's?

A. None—or money derived through her.

113. Q. In whose name did you keep your *keep your* bank account?

A. Sophia H. Bonesteel.

114. Q. State whether or not the money was absolutely hers, or where she obtained it.

A. She obtained it from her father; it was her money, so considered by herself, by her father, and myself, and charged to her interest in her father's estate; her father was a man of large estate—large means.

115. Q. With what influential person or politician is your wife connected, and how?

A. To Mr. S. B. Chittenden, by marriage; lives in Brooklyn, and one of the proprietors of the newspaper called the "Union," and has advocated from the first the introduction of the pavement.

116. Q. Was Mr. Chittenden's influence particularly desired by Mr. Taylor?

A. Very much indeed.

127 117. Q. By means of your connection by marriage with Mr. Chittenden, were you enabled to bring strong influence to bear in favor of the introduction of the Nicolson pavement, and to effect the sale that was made to the Brooklyn parties?

A. Yes, sir.

118. Q. Is any portion of the debt in the schedule to Sherman Hartwell ($19,000) made up of moneys which he advanced to your wife for business purposes?

A. Not one dollar.

Re-direct examination by counsel for creditors:

119. Q. When did you first become acquainted with Sherman Hartwell?

A. About 22 or 25 years ago.

120. Q. Where were you when he first gave you credit?

A. At Bridgeport, Connecticut, Milwaukee, and New York City; don't recollect the year.

121. Q. What year was it?

A. I don't recollect.

122. Q. About how long was it after you first became acquainted with him?

A. I could not tell; I think it was several years after.

128 123. Q. Were any evidences of indebtedness given to him upon the advances he made to your wife, and which you have testified as having been made to her?

A. I know it was charged to her on her father's books; a statement was rendered to her.

124. Q. Question repeated.

A. None by me; I know of no other.

125. Q. Who made application to Mr. Hartwell for such advances?

A. My wife did repeatedly.

126. Q. Advances for the purchase and sale of goods?

A. Advances to her of money for business purposes.

127. Q. Do you know that she said to him that it was for the purchase of goods?

A. Her father told me so.

128. Q. Did you ever hold any conversation with him on the subject of making such advances?

A. None whatever.

128½. Q. Did your wife first propose the matter to you or you to her?

A. I guess it was mutual.

129. Q. Question repeated.

A. I should think that it was my own suggestion.

130. Q. Did you render any formal statement of your transactions in the purchase and sale of goods to your wife?

A. I did; I used to tell her of every day's transactions as soon as I returned home.

129 131. Q. Did you ever make any such formal statement in writing?

A. I think I did, and showed her the result of our operations of a losing character.

132. Q. How often did you make such written statements?

A. I don't recollect.

133. Q. Did you make more than one?

A. Yes, sir.

134. Q. Did you make them oftener than once in three months?

A. I don't recollect.

135. Q. What compensation did she pay you, if any?

A. I was trying to support the family by the means of it.

136. Q. The profits of these transactions were yours?

A. No, sir.

137. Q. Did you have any stipulated money reward from your wife for your time in her service?

A. No, sir.

138. Q. What relation is your wife by blood or affinity to S. B. Chittenden?

A. We married sisters; I decline to answer; Mr. Chittenden's first wife was my wife's sister.

139. Q. Who called upon Mr. Chittenden to induce him to use his influence in behalf of the Nicolson pavement?

A. Mr. Taylor and myself.

140. Q. Was that influence to be used in Brooklyn or New York?

A. In Brooklyn, where he lives and holds property.

130 141. Q. When did you first call on Mr. Chittenden; was it before or after the assignment to your wife?

A. Some considerable time before, and before the laying of the Nicolson pavement in New York.

142. Q. Did Mrs. Bonesteel call on Mr. Chittenden for the same purpose?

A. She has talked to him time and time again, and talked to him in my presence.

143. Q. Question repeated.

A. She has.

144. Q. When first did she do so?

A. Long before the execution of this assignment.

145. Q. About what time did you last obtain credit from Sherman Hartwell?

A. Not within the last five years.

Further cross-examination by bankrupt's counsel:

146. Q. During how many years past has your wife contributed to the support of your family?

A. During the last 7 years.

147. Q. To what extent yearly does she so contribute; about what amount yearly does she receive from her father for family support?

A. From $2,000 to $2,500 per year, & sometimes more.

148. Q. Do you live in a house owned and furnished by Mr. Hartwell?

A. We do; he pays the taxes, insurance, &c., as I am informed

131 by him.

149. Q. What condition did Mr. Chittenden make for the use of his influence and his paper for the introduction of the pavement?

A. Mr. Chittenden refused to use his influence until Mr. Taylor had assigned the interest to my wife, and until he could gain more positive information about the pavement than he was then possessed of.

150. Q. State whether or not Mr. Chittenden is a large owner of real estate, and tax payer?

A. He is the second largest tax payer in Brooklyn.

July 14, 1868. Examination resumed.

150½. Q. When last did Sherman Hartwell advance money to you or your wife to meet your household expenses?

A. About July 2, 1868.

151. Q. How much did he so advance at that time?

A. At that time he advanced $15 00; it was prior to the time of the usual remittance; it was written for.

152. Q. What are the usual times for such remittances?

A. From the 15th to 20th of each & every month.

153. Q. What is the usual amount of such remittances?

132 A. Never less than $100 00.

154. Q. What is the largest amount?

A. The largest I recollect of receiving at any one time was $500, the amount depending entirely upon our requirements.

155. Q. Has he made such remittance as usual during the current year?

A. He has.

156. Q. About how much has he advanced during the current year, 1868, (it now being July?)

A. I should say about $1,000.

157. Q. During the past months of this year about how much have you expended for personal and household expenses?

A. I could not state; at another meeting I will give you the exact amount, because I enter everything, no matter what it is for.

159. Q. Between Oct. 1st, 1867, and Feb. 28, 1868, about how much was advanced for household expenses by Sherman Hartwell?

A. I can't state; I will find out and answer on next examination day.

160. Q. Did you spend the whole sum received during the same period, from the Nicolson Pavement Company, as your salary?

A. I did.

161. Q. Can you, and if so, state for what, or for what chiefly, your salary was so spent?

A. Mainly, chiefly, and solely for the support of my family and their education.

133 162. Q. Of what persons does your family consist, and for whom you so spent it?

A. My wife, myself, and 2 children, and the support of a sister.

163. Q. How old are these two children?

A. One about 17 and the other 4 years old.

164. Q. Do all these persons live with you?

A. All excepting sister.

165. Q. About how much did you spend during the period referred to for your sister?

A. About $150; maybe more, and maybe less. I will tell the exact amount next meeting.

165½. Q. What amount during the same time did you spend for the education of your children?

A. I cannot state. If it is in my power, I will furnish the amount next meeting.

174. Q. You have testified that you kept your bank account in the name of your wife; in what form did you sign checks when drawn on that bank?

A. When kept in her name, she generally signed the checks. Previous to keeping the account in her name, and at the suggestion of her father and herself, the account was changed from my name to hers, and afterwards kept in hers.

134 175. Q. How long was that account kept in your name?

A. About a year.

178. Q. Did Mr. Hartwell or your wife give any reason for suggesting the change?

A. Nothing more than the money was hers, and, being hers, the account should be in her name.

179. Q. Why did you put that bank account in your own name in the first instance?

A. Matter of convenience.

180. Q. Did you inform Mr. Hartwell that you kept that account in your own name?

A. I think very likely.

181. Q. Question repeated.

A. I did; he having loaned or given this money to my wife.

182. Q. Did you not change the name in that bank account of your own motion because you feared that some creditor would get hold of it as yours; and did you not so state, or something to that effect, to any one?

A. The change was made three years ago. In reference to the first part of the question I did not change the name of that bank account on my own motion, but at the solicitation of my wife. I have no recollection of having so stated to any one. I may have said so, and I may not.

135 186. Q. Did you first speak to your wife, or she to you about changing the name in that bank account?

A. She spoke to me.

187. Q. Will you tell us the circumstances under which she proposed that change?

A. I don't recollect.

188. Q. When was the first assignment of Nicolson pavement made to your wife?

A. I don't recollect. I will inform you at next meeting.

189. Q. When was the first Nicolson pavement laid in the city of New York?

A. About 3 years ago, (this ex'r July 14, 1868.)

190. Was it for the first pavement laid that you received the $1,000 00 to which you testified?

A. No; it was for several pieces that were laid subsequent to the first.

191. Q. When were those last pieces laid?

A. About 3 years ago.

192. Q. When was the first Nicolson pavement laid in the city of Brooklyn at the expense of the corporation?

A. There's never been any laid in the city of Brooklyn at the expense of the corporation.

193. Q. At whose expense, and by contract with whom is that pavement being laid in Clinton st., Brooklyn?

A. At the expense and loss of the Nicolson Pavement Co. of Brooklyn, and the contract is with the commissioner for the improve-

136 ment of Clinton street.

194. Q. Are the Nicolson Pavement Co. to receive, or do they receive remuneration for laying the pavement in Clinton street, & if so, for whom?

A. They do receive from the commissioners, they receive a certificate, and on that certificate they receive their pay.

195. Q. About what remuneration do they, or are they to receive?

A. $85,000—they were to receive for the whole street in certificates or assessment bonds.

197. Q. When was that contract made?
A. I think in the fall of 1867.
198. Q. Who signed that contract in behalf of the contractor?
A. I signed in behalf of the company.
199. Q. What signature did you affix?
A. John N. Bonesteel, superintendent.
200. Q. Did you add the word superintendent?
A. I cannot state; it is my usual custom to do so.
202. Q. When was the Nicolson Pavement Co. formed?
A. I should say in October, 1867.
203. Q. To whom did Kidder and the others pay the $10,000 which you have testified they paid for the interest they now own?
A. Jonathan Taylor.
204. Q. Did you not receive any of that $10,000, or any other person other than Jonathan Taylor?
A. No, sir.
137 205. Q. Did not Jonathan Taylor put at your disposal, or that of your wife, the whole interest in Nicolson pavement of Brooklyn?
A. He did not.
206. Q. Did you not so state to John R. Fame?
A. I have no recollection.

December 10, 1868. Examination resumed.

210. Q. Who negotiated and procured the sale of the half interest in Nicolson pavement in Brooklyn, other than that transferred to your wife, to the purchasers from Mr. Taylor?
A. I did.
211. Q. Who authorized you to negotiate that sale?
A. Mr. Taylor did; as he had previous interviews with these purchase's, and wished me to follow it up.
212. Q. What arrangement was made between you and Mr. Taylor in reference to such negotiation and sale?
A. That I was to do all in my power to assist in making the sale.
213. Q. What inducements, if any, did he offer to you to render such assistance?
A. That I should be rewarded in return.
214. Q. Did he name the nature of the reward?
138 A. Yes; that he would give my wife an interest in the Nicolson pavement for Brooklyn.
215. Q. Did he name the extent of the interest he would give?
A. No, he did not.
216. Q. When was the amount, viz, one-half of that interest, fixed upon?
A. About the time of his sale of the half to Page and others, I reported to Mr. Taylor that I had made the sale, but refused to give the names.
217. Q. How much of this interest were you authorized by Mr. Taylor to sell?
A. One-half.
218. Q. Can you state, or do you know, why that particular amount was fixed upon?
A. Because he wished to retain a portion for himself.
219. Q. Upon your completing that sale, did he retain a portion for himself?
A. He did not.

220. Q. When was the agreement to transfer one-half interest to your wife, and the other half to the parties you have already named, completed or made?

A. December 7, 1856; it was not made before that day, because I was negotiating for the sale of the half, and had obtained a larger offer
139 than Mr. Taylor expected, and I refused to disclose the name until Mr. Taylor agreed to give my wife the other half; Mr. Taylor had not originally intended to give as much as the half interest, intending to reserve a fractional interest for himself; at the same time I was negotiating with parties for the purchase and sale for Mr. Taylor of an interest in the city of New York & in Jersey City.

221. Q. Was these last facts an additional reason for your requiring that Mr. Taylor should transfer to your wife the half which he did?

A. Yes; they were.

222. Q. Did you not, at and before that time, owe all the debts named in your schedule, or the larger part of them, in amount?

A. I did not owe all the debts named in my schedule at that time, but did owe the greater portion of them in amount.

323. Q. Were you at that time able to pay all your debts?

A. I was not.

224. Q. Have you been able to pay all your debts at any time since April, 1859?

A. I have not since I made my assignment; I think it was in the spring of 1859.

225. Q. Did you give to Sherman Hartwell any evidences of debt for the $19,000 specified in your schedules as due from you to him?

140 A. He has against me a book account; notes which I have made and he has endorsed for my accommodation, and paid, as well as acceptances; they make up the debt embraced in my schedules.

226. Q. When was the last indebtedness created by you to him, that forms part of that $19,000 00?

A. At different times, the last seven years.

227. Q. You failed, & made an assignment in 1859, in Milwaukee?

A. Yes; in the spring of the year.

228. Q. How much of the debt to Hartwell have you contracted since you made that assignment?

A. He has paid from $3,000 to $5,000 of paper existing at the date of that assignment; part of this within two years; and has also advanced sums of money to me—I cannot say to what amount.

229. Q. State about how much?

A. I cannot answer to-day, but will at a future time.

230. Q. When?

A. Within a very short time.

231. Q. Have you any memoranda in your own possession showing when this debt was contracted with Hartwell?

A. Nothing more than his statements to me.

232. Q. How many statements have you got?

A. Several.

141 233. Q. Question repeated.

A. I cannot state the number. My practice has been to compare them, and if found correct, to destroy the former one. I have no safe for keeping papers.

234. Q. When did he render you the last one?

A. In January or February last, (1868.) I will bring it with me at the next meeting.

December 17, 1868. Resumed.

236. Q. Have you got the statement which you say was rendered to you by Mr. Hartwell in January or February last?

A. No.

237. Q. Where is that statement?

A. I find I was mistaken. I did not receive any statement from him in January or February last.

238. Q. When did you receive the last statement prior to December 1, 1868?

A. In June last.

239. Q. Where is that one of June last?

A. I don't know.

240. Q. Have you destroyed it?

A. I have not, to my knowledge; but cannot find it.

241. Q. Have you any statement received from him prior to December 1, 1868?

A. I have not.

242. Q. Is this statement a copy of the one you received last?

142 A. As near as I can recollect, it is a perfect copy of the one I had at that time, except the last two items of $1,743 and $28,272, which were not in the June statement. Statement annexed, marked Exhibit "A." It is in the handwriting of Mr. Hartwell. It contains all my indebtedness to Mr. Hartwell, as far as I know. I have no means of knowing how much I owe Mr. Hartwell, except his statement to me. Mr. Hartwell has had no receipts, notes, vouchers, or other evidence of indebtedness *to me* since June last, when he returned them to me with a statement, except his book account. He returned me notes, book accounts which he paid for me, as vouchers for my indebtedness to him. They are either at my house or Mr. Butler's (my counsel) office.

243. Q. Do you testify that you owe personally to Mr. Hartwell all the items in Exhibit A, except those that follow the item of $4,905 73?

A. Yes.

244. Q. Were not the items designated as cash given to Sophia Bonesteel & J. N. Bonesteel, and amounting to $9,369, all charged by Mr. Hartwell to his daughter, as an advance to her out of his estate in his lifetime, and to be accounted for as such by her after his decease?

143 And have they not always been regarded so by Mr. Hartwell, and not as a debt against you personally?

A. They have always been regarded as a personal debt against me. As to what Mr. Hartwell may have considered or concluded to do with them I do not know. I don't know how they are charged on his books. I never saw his books. He has asked me when I could be in a condition to pay them, repeatedly. I never gave him any evidence of indebtedness. He never asked for any.

245. Q. Why does Mr. Hartwell, in making up this item in Exhibit A, of $9,369, state it to be "Cash given to Sophia & J. N. Bonesteel?"

A. I have no means of knowing why he does it, because I have had no interview or correspondence with him at any time in reference to the same.

246. Q. Have not all the previous statements received by you from Mr. Hartwell, so far as they relate to the items that compose this sum of $9,369, contain the same statement as Exhibit A does, namely, "Cash given to Sophia & J. N. Bonesteel?"

A. I don't recollect. I have no means of knowing.

247. Q. Was not this entire sum of $9,369 in fact given by Mr.

144 Hartwell to Sophia and J. N. Bonesteel, or to Sophia Bonesteel?
A. It was not.
248. Q. Was it a loan of money to you?
A. It was. I solicited all those loans. I found myself unable to maintain my family without his assistance. I destroy all my letters. I have no letter from Sherman Hartwell.
(The bankrupt here explaining the answer in reference to vouchers returned, says my answer has reference only to the items footed at $6,219 84.)

January 13, 1868. Examination resumed.

253. Q. In whom is the title of this house and lot made you are charged five thousand dollars?
A. Sherman Hartwell, of Bridgeport, Connecticut.
254. Q. The purchase is in his name?
A. It is all bought in his name and he paid for it?
255. Q. How much of the capital of the Nicholson Pavement Company of Brooklyn, was issued to Mrs. Bonesteel since the formation of the company?
A. I think eleven hundred and fifty shares.
256. Q. What is the par value of the shares?
A. It is $100 a share. I think it is $100 a share; but some portion of stock has been reserved for working capital and other uses of
145 the company and for giving away.
257. Q. These shares of par value are $100, are they not?
A. No, sir.
258. Q. I do not mean the actual value, but the par value.
A. One hundred dollars a share.
259. Q. Did not Mrs. Bonesteel have one-half of the whole stock, which was yours, except that which was reserved?
A. One-quarter of it.
260. Q. Explain why Mrs. Bonesteel received but one-fourth of the stock?
A. The company was not organized until a year after the time Taylor transferred the interest to her.
261. Q. Was she not entitled, as the owner of one-half of the interest, to one-half of the stock?
A. She was not.
262. Q. Why not.
A. She disposed of the other quarter.
263. Q. Who to?
A. To William Smith & Co.
264. Q. For how much?
A. For ten thousand dollars in all.
265. Q. Who received that money?
A. She did.
266. Q. Who negotiated the sale?
A. I did and she together—both of us.
267. Q. When was that done?
A. About two years since.
268. Q. How transactions were there in the disposing of this quarter of the interest.
A. Two.
269. Q. When was the first one had?
146 A. I do not recollect.
270. Q. Who was present?

A. I do not recollect.

271. Q. Was anybody present but you and the parties to whom you sold?

A. And Mrs. Bonesteel.

272. Q. Was that in Brooklyn or New York.

A. I think it was in Brooklyn.

273. Q. Where did these parties live?

A. In Green Point.

274. Q. Is their place of business in Green Point?

A. I think it is. There have been interviews in regard to it; there have been interviews at their place of business.

275. Q. How much was sold to them at these transactions?

A. One-eighth.

276. Q. Was there not several interviews with them prior to the time when the sale was completed?

A. I think very likely.

277. Q. Was Mrs. Bonesteel present at any of them, except at the completion of the sale?

A. I do not recollect.

278. Q. Did you not in effect negotiate that sale?

A. I did; in her behalf and as her agent.

279. Q. Did she not take your advice in reference to that sale?

A. She did not wholly.

280. Q. To whom was the money paid?

A. It was given in notes.

281. Q. To whom were these notes payable?

A. Payable to their own order.

147 282. Q. And endorsed in blank?

A. Endorsed by them.

283. Q. Who to?

A. It was given to their order and endorsed by them?

284. Q. Who were the notes endorsed to?

A. They were payable to the order of Smith & Co., and endorsed by them in blank.

285. Q. Did you receive those notes?

A. At the time of the transfer; yes, sir.

286. Q. And Mrs. Bonesteel executed a transfer of one-eighth interest?

A. Yes, sir; previous to the notes being executed.

287. Q. Where did she execute this transfer?

A. My own impression is, in the house.

288. Q. Did you take that transfer, and deliver it yourself, and receive the notes?

A. I did.

289. Q. How much did these notes amount to on the transfer of one-eighth?

A. Four thousand dollars.

290. Q. Have these notes been paid?

A. They have.

291. Q. How were they paid?

A. I cannot say whether they were paid in check or money.

292. Q. Did you receive payment on them?

A. No, sir.

293. To whom were they paid?

A. They were paid to S. B. Chittenden & Co.

294. Q. How came they to be to S. B. Chittenden & Co.?

A. They advanced the money in order to carry on the interest—

148 for advances made by them to her.

295. Q. Did you have anything to do with these advances?

A. No, sir.

296. Q. Did she?

A. What do you mean by furnishing the money, or negotiating for them?

297. Q. I mean by negotiating for these advances, or having anything to do with these advances.

A. I assisted her in obtaining them.

298. Q. What did you do?

A. By representing to Mr. Chittenden she must have money to protect her interest, and help support the family.

299. Q. Did you not receive the money yourself from Chittenden, on delivery of the notes.

A. No, sir.

300. Q. Who did that?

A. I could not state whether the notes were delivered to him at the house or at his store.

301. Q. How much money did he advance on these notes?

A. The full amount of those notes, less interest.

302. Q. Did he advance all of it at one time?

A. He did not.

303. Q. At how many times?

A. From time to time, as it was wanted.

304. Q. How long afterwards was the other eighth sold to Smith & Co.?

A. Some time within a year afterward.

305. Q. Did you negotiate that sale as the agent of your wife?

149 A. I did, the amount of it was $6,000.

306. Q. How was that paid?

A. By notes.

307. Q. Have those notes been paid?

A. They have.

308. Q. Who received the money on them?

A. Those were used in the same way as the other with S. B. Chittenden & Co.

309. Q. Where did Mrs. Bonesteel execute the assignment of that one-eighth?

A. Either at the office of Kidder & Co., New York, or at our house.

310. Q. Did you not deliver that assignment and receive the notes as her agent?

A. I did, sir.

311. Q. At what place?

A. At the place of business of Smith & Co.

312. Q. How much of this $10,000 was used in the support of your family?

A. I could not state.

313. Q. State as nearly as you can?

A. I do not see how I can answer that question, the greater part being used in the support of the family, and to respond to assessments made by the company.

314. Q. How was the rest of it used?

A. There is no rest.

315. Q. What were those assessments that you speak of?

A. The money requirements of the company to be used in different ways.

316. Q. Well, in what ways?

A. To demonstrate the pavement by doing work at a loss, and
150 to obtain the services and assistance of parties to aid in the obtaining of work.

317. Q. What purposes?

A. I do not know.

318. Q. Do you state that you do not know for what purposes these moneys that you say were paid to the company were used?

A. No, sir; I did not say so.

319. Q. Do you claim that any part of these moneys were used with the officials in the procuring of contracts?

A. I have no knowledge of mine own that that money was used for such a purpose.

320. Q. Did you pay these monies to the company?

A. I think I did.

321. Q. Were you not informed for what purpose they were to be used?

A. To advance the interests of the company.

322. Q. Where you not informed beyond that?

A. I think not.

323. Q. How much of this $10,000 was paid to the company—what proportion?

A. I could not state.

324. Q. Was it two thousand dollars?

A. I could not state.

325. Q. Was it two, or three, or four thousand dollars?

A. I could not state.

326. Q. Have you any means of telling?

A. I have none.

151 327. Q. Was any of it paid to the company of this $10,000.

A. There have been, assessments made repeatedly.

328. Q. Question repeated.

A. There have been, repeatedly, assessments made to advance the interests of the company.

329. Q. Will you swear that one thousand dollars was paid to the company out of this ten thousand dollars?

A. Yes, sir.

330. Q. Will you swear two thousand dollars?

A. I can only answer that question by saying that repeated assessments were made out of this $10,000.

331. Q. Question repeated.

A. I cannot answer this question.

332. Q. Did not Mrs. Bonesteel when the company was organized receive at least a thousand shares of stock in that company?

A. I think she received 1,150.

333. Q. You say she received 1,150 shares?

A. Yes, sir.

334. Q. Does she own these shares now?

A. She does not own as much as that now.

335. Q. How many shares has she sold?

A. I think she owns 1,145 shares; she gave me five shares only to make me a trustee.

336. Q. And now it is 1,145?

A. I think it is.

337. Q. To whom were these five shares sold and for how much?
152 A. She gave them to me in order that I could be a trustee in the company.
338. Q. And do you still own these shares?
A. I do.
339. Q. Why did you not include them in your schedules?
A. I did not own them then?
340. Q. When did she transfer them to you?
A. In November, 1868.
341. Q. Are you a director in the company, now?
A. I am a director or trustee, I don't know which.
342. Q. Is the company transacting any business now?
A. No, sir.
343. Q. How long prior to the organization of the company was it that you sold the ¼ interest of the stock to Smith & Co.?

January 26th, 1869. Examination resumed.

A. I should say about one year previous to the organization of the company that I made the first sale to Smith & Co., & about 6 months after that I made the second sale to them.

January 26, 1869. Continued.

344. Q. When was the Nicolson Pavement Company of Brooklyn organized?
A. In October or November, 1867.
153 345. Q. You have been superintendent of the company ever since?
A. I have; I received for a portion of the first year after the organization of the company $3,000 a year, and since then $4,000 salary as superintendent.
346. Q. Has that all been paid to you?
A. It has.
347. Q. During that time have you done any business besides being superintendent of the company?
A. None whatever.
348. Q. Have you executed contracts on behalf of the company?
A. No. I think I have not executed any contract on behalf of the company. Before the company was organized I executed, as superintendent for the parties interested, a contract for paving Clinton street from Fulton street to 2d Place for $85,000; that contract was subsequently assumed by the company, after they organized. That work has been done; there is about $55,000 due on the contract; that amount is due to the co. There is not a cent due me. There has been interest and extra work, leaving due a balance of $50,000. It is now payable.
The injunction that was placed upon it has been removed. This
154 company has a contract for paving Union street; there are 4,260 yards. They are paid $20 a running foot when the work is finished. No other. I know Dr. F. G. Johnson.
349. Q. Did you deliver to him any portion of the notes which you state were received from William Smith & Co. on the sale of the interest to them; and if so, for what amount & for what purpose?
A. Mr. Nicolson gave me the right for the State of Connecticut, for laying that pavement, until the expiration of his patent. I gave one-half of my interest to Dr. Johnson until the expiration of the patent, which had but a few months to run, and he was to assist in the sale of

the State of Connecticut, and also to make an effort to develope the same, so that we might sell out.

350. Q. And for this you say you gave him one of these notes of Smith & Co.?

A. Yes, sir.

351. Q. The amount, how much?

A. $500. The sale was made of this to Smith for $1,000, and the interest sold to this Smith, but I have forgotten what time it was.

352. Q. Interest in what?

A. In Connecticut.

155 353. Q. Did you not give to him a note received from Smith & Co., in part payment for the interest which they bought in the city of Brooklyn?

A. No, sir.

355. Q. How much did you get for your interest in the State of Connecticut?

A. One-half of the interest was sold for $1,000.

356. Q. How much did you get?

A. One-half the $1,000.

357. Q. When?

A. At the time the sale was made.

358. Q. When was the sale made?

A. I cannot answer.

359. Q. Cannot you state in what year?

A. I should say it was in the winter of 1867. I have no means of knowing.

360. Q. When did you get the interest from Nicholson?

A. In the fall of 1866.

561. Q. Was it the winter following when the sale was made to Smith & Co.?

A. I think so; a few months after.

362. Q. Was that before or after they paid for the interest in Brooklyn?

A. Long after they paid for the interest in Brooklyn.

363. Q. Was that before or after you filed your petition in this case?

A. Long before I filed my petition.

264. Q. How long before?

A. I could not answer.

365. Q. Was it as long as six months?

A. Yes, sir.

366. Q. Was it 12 months?

A. I find I am wrong about the dates I have given you. Upon reflection, I think the sale of Connecticut, above referred to, to Smith

156 was made in the spring or winter of 1866.

367. Q. Do you propose to correct your testimony already given upon that subject any further?

A. Not for the present.

368. Q. Had you any property at the time your petition was filed in this case, or was you interested in any property not mentioned in your schedules?

A. None whatever. I now state that when the State of Connecticut was sold, Dr. Johnson received one note for $500, and I another, and I immediately gave him the one I received.

372. Q. What did you give it to him for?

A. Well, he claimed that he had done a great deal for the company, and never received anything, and made several complaints.

373. Q. You gave him the note then because he had rendered services to the Brooklyn company?

A. To the Brooklyn company and the other pavement interest.

374. Q. Was he rewarded otherwise to your knowledge, except by your giving him this note?

A. I could not state.

(Signed) JOHN N. BONESTEEL.

Sworn before me this 12th February, 1869.

(Signed) I. T. WILLIAMS.
Register in Bankruptcy.

157 *Copy of Exhibit A, referred to in testimony of J. N. Bonesteel.*

Memorandum of cash and other expenses advanced and paid by S. Hartwell for J. N. Bonesteel & wife, from 1850 to May 1867.

1851. Aug. 12.	Cash to J. N. Bonesteel, by d'ft, on N. Y		$500 00
1852. Feb'y 25.	" " "	paid Chittenden, Bliss & Co	700 00
Nov. 23.	" " "	rec'd from Stephen Hollister	500 00
1853. Jan. 1.	" " "	to pay Sherman note	1,000 00
Oct. 8.	" " "	d'ft on N. Y	500 00
1859. June 1.	" " "	paid your note to Geo. T. Todd	746 17
1860. Sept. 26.	" " "	paid your note to T. P. Chapman	1,357 92
" "	" " "	" " " S. B. Chittenden & Co.	800 00
1861. May 21.	" " "	" your ac. to S. B. C. & Co	115 75
	Cash given to and for J. H. Bonesteel		$6,219 84

Cash given to Sophia & J. N. Bonesteel:—

From Jan'y 1, 1850, to Jan'y 1, 1861		$3,296	
" " 1, 1861, " " 1, 1862		250	
" " 1, 1862, " " 1, 1863		820	
" " 1, 1863, " " 1, 1864		1,000	
" " 1, 1864, " " 1, 1865		1,212	
" " 1, 1865, " " 1, 1866		1,091	
" " 1, 1866, " " 1, 1867		1,200	
" " 1, 1867, " May 1, 1867		500	
			$9,369 00
J. N. Bonesteel bought 7 lots in block 183, Milwaukie, & conveyed them to me. Said lots *was* incumbered by mortgages, which I paid. Also paid taxes, interest, and assessments on said lots; also built on said lots a double brick house, all at a cost in cash of		$24,330 93	
Houses & lots sold for		19,425 00	
			$4,905 93
Loss on houses and lots		4,905 93	
158 1863. May 7. Cash paid for house in Brooklyn for the use of J. H. Bonesteel & family		5,000 00	
Cash paid for furniture		959 22	
Cash paid for taxes, insurance, & repairs to November 28, 1866		831 23	
			$6,790 45
Cash advanced to Sophia H. Bonesteel, amount due Jan'y 1, 1866			2,925 00
			$30,210 22
From May 1, 1867, to Dec. 1, 1868, I have given Sophia to help her support her family, cash			1,743 00
During the same time I have paid taxes and insurance on house and furniture			282 72
			$2,025 72

No. 890. In the district court of the United States for the southern district of New York.

SOUTHERN DISTRICT OF NEW YORK, *ss*:

JOHN N. BONESTEEL, of New York, in the county of New York, and State of New York, being duly sworn at the time and place above mentioned, upon his oath says:

Counsel for assignee offered in evidence a stipulation as to testimony—date of stipulation Mar. 29th—with the consent of bankrupt's counsel, which stipulation, with copy of testimony thereto annexed, is herewith returned.

This examination is taken under a special order of the court
159 dated March 2, 1869, directing that further testimony in this case be taken.

Counsel for assignee further examined the bankrupt, who testified as follows:

1. Q. Does Exhibit "A," attached to your testimony, contain a statement of all the moneys furnished by Sherman Hartwell to you and your wife up to Dec. 1st, '68?

(Objected to by counsel for Mrs. Bonesteel. Exception taken.)

A. As near as I can recollect, except the entry of the house in Brooklyn—house and lot in Brooklyn.

2. Q. Did he furnish any money at all that is not stated in this paper, Exhibit A?

A. I don't recollect.

3. Q. Well, what is it you don't recollect; is it that he did not furnish any money?

A. I do not recollect of his furnishing any other money.

4. Q. For what purpose was the money used that is mentioned in Exhibit A as cash given to Sophia H. Bonesteel, amounting to the sum of $9,369?

A. To maintain my family.

5. Q. And for no other purpose?

A. None whatever.

6. Q. Explain what you mean by the words "to maintain my family."

A. To clothe and feed them, and to pay household expenses; anything that is necessary to support the family.

7. Q. Only, then, family expenses?

A. Yes, sir.

160 8. Q. For what purpose was the item of $1,743 used, stated as having been given Sophia from May 1st, 1867, to Dec. 1st, 1868, to help her support the family?

A. That was family expenses, the same as the other.

9. Q. For what purpose was the item of $2,925 used, cash stated in Exhibit A, as cash advanced to Sophia, amount due January 1st, 1866?

A. This was money that she went and obtained from her father in order to enable me to do business by which I could maintain the family.

10. Q. Was not all that money advanced prior to the 1st day of January, 1866?

A. I have no means of informing myself.

11. Q. Was that money all advanced at one time?

A. I think within a few weeks of each other—in two payments.

12. Q. When was that?

A. In the year 1866.

13. Q. Was it then that you commenced doing business?

A. I think it was in the year 1866 that I was doing business.

14. Q. How long did you continue to do business upon this capital?

A. I do not know that I can answer that question. I should say about a year—a little better than a year.

15. Q. Where did you do business?

A. In New York City.

16. Q. At what place in New York City?

A. On Chambers street.

17. Q. What number on Chambers street?

161 A. I cannot tell you. It is between Church and Broadway, on the right-hand side as you go up from Broadway towards Church.

18. Q. Did you rent any store there?

A. No, sir. I had a desk there.

19. Q. In whose office?

A. Part of the time with Faure & McCosh and part of the time with J. M. Plum & Company.

20. Q. How much rent did you pay?

A. Faure & McCosh gave me my rent free in consideration of my buying goods for them and doing various acts for them.

21. Q. What did you pay Plum?

A. He gave me my rent. I done the same thing for them too.

22. Q. During all the time that you was in business for yourself you were also doing business for Plum and Faure & McCosh, were you?

A. Anything; yes, sir.

23. Q. How much did that business amount to during the time that you carried it on?

A. It amounted to an unprofitable business and the sinking of the capital.

24. Q. Was all the capital sunk in the business?

A. As near as I can recollect.

25. Q. And were not debts contracted besides, that have not since been paid?

A. There is one debt.

26. Q. That is the debt of Stanfield, Wentworth & Co., amounting to $3,742 61?

A. Yes, sir.

162 27. Q. That debt you contracted in your own name, I suppose?

A. I did.

28. Q. Are there any other unpaid debts that arose in the course of that business?

A. Not that I now recollect of.

29. Q. Were other debts contracted in the business?

A. Yes, sir.

30. Q. In whose name were they contracted?

A. Some in my name, and some in the name of Sherman Hartwell.

31. Q. How much goods did you have on hand, at the close of this business, in value?

A. I think it was about $17,000 in value in the summer time. I did nothing in the winter time; I did nothing out of season. That was the time I bought my goods, holding them for the business season to commence.

32. Q. What portions of the year were you doing business, and what portions not?

A. During the business season of the year.

33. Q. What months of the season was that?

A. It would be in the spring, in the early summer months, and just in the fall, and the winter months again.

34. Q. Then about half the time you was doing no business at all?

A. No, sir.

35. Q. Where did you keep your goods?

A. Generally, wherever I bought them, they allowed them to remain there. Then I would take samples, and go upon the , and
163 also send samples to Philadelphia and Baltimore.

36. Q. Why did you keep these goods in the stores of the parties from whom you purchased them?

A. For the reason that I had no storage for them, and that was part of the agreement when I purchased them.

37. Q. Were these goods bought on credit or for cash?

A. On credit, and sometimes for cash, just as I could buy them most advantageously.

38. Q. How about these goods that you had on hand at the close of your business?

A. They were bought on time.

39. Q. Did you give notes for them?

A. No, sir; I bought on open account.

40. Q. In whose name was that account kept in?

A. Sometimes in the name of Mr. Hartwell and myself.

41. Q. On these particular goods?

A. They were in my own.

42. Q. Did those goods include the goods you had bought of Stanfield, Wentworth & Co.?

A. I do not know whether I had any of their goods on hand when I closed up or not.

43. Q. Did you have a right to take these goods from these stores until they were paid for?

A. Yes, sir.

44. Q. In all cases?

A. Never had the question brought up before.

45. Q. I wish you would locate the time you contracted the
164 debt with Stanfield, Wentworth & Co.

A. I have no means of knowing, except by referring to the records and by referring to the time when judgment was entered up against me.

46. Q. Were these goods, bought of Stanfield, Wentworth & Co., bought in the course of this business that you was conducting with the capital of your wife?

A. No, sir. That was a separate adventure, where a man by the name of Derrickson and their book-keeper were interested with me.

47. Q. Were you carrying on business on your own account at the same time that you was carrying on business with your wife's capital?

A. I think I was.

48. Q. Had not Mr. Taylor been here nearly a year prior to the time when he executed the assignment to your wife and the other parties?

A. I think not. I think he came here in the summer.

49. Q. You have stated in your examination that you made about a thousand dollars off of Taylor?

A. Yes; contracts which I obtained and went on with while he was out of the city.

50. Q. How many months more were you occupied in that prior to the execution of this assignment?

A. Not many months. I could not tell you.

51. Q. Well, was it four or five?

165 A. Three or four months, I think it was.

52. Q. Did you keep any books in this business done on your wife's capital?

A. Well, nothing but memorandum books and my bills. I kept them and kept entries how much I made.

53. Q. You kept no regular books of account.

A. I kept my bills and pasted them in my blotter.

54. Q. You have got that blotter in your possession.

A. No sir. I have destroyed all this a long time ago.

55. Q. How long since you destroyed them?

A. When I closed up my business. I had no safe, and no place to keep them. The desk I had was a borrowed one.

56. Q. Can you locate the time when you destroyed this book and these bills?

A. No, I cannot; I should think it was in the winter of 1866, and 1867.

57. Q. The statements contained in this paper, Exhibit A, are correct and accurate, are they not?

A. I think they are.

MARCH 31, 1869.

The examination was adjourned till this day. Witness desired to explain one or two matters referred to in the foregoing examination.

Witness says that the item of $2,925, mentioned in Exhibit "A," must have been received by him prior to January, 1866; and further says,

166 in answer to another question, that since the last meeting he has instituted a search to discover, if possible, any books of account left of his transactions on his wife's account, and has succeeded in finding one of them, and further desires to state that he supposes he destroyed the others, as he cannot find them.

By Mr. Butler, counsel for respondent:

Q. You have stated there was two kinds of business carried on by yourself. To what extent was any business carried on by yourself separate from your wife's account, and the character of it?

A. I do not know as I can answer that question. There were cases when Mr. Derrickson, who is referred to in this bill of Stanfield, Wentwort & Co., who, being a clerk in that house, or head salesman, would buy goods and have them charged to me without consulting me. He would notify me during the day when the purchase was made, and of the goods having been charged to me, he being jointly interested in the adventure; and I also recollect of his buying a large bill of 50-odd cases of flannel of Claflin, Mellen & Co., and having the goods charged to me without my knowing of the purchase until he notified me of the purchase of them, and on all such adventures he and I was together. There may be other instances that I don't recollect.

58. Q. By Mr. BUTLER. In these instances of transactions, sepa-

167 rate from your wife's business, were they generally conducted or entered into by some other party than yourself? and if so, with whom?

A. If woollen goods were bought, by Mr. Derrickson; if embroidery goods were bought, by Mr. Ferguson; both being familiar with these kinds of goods, being in their trade.

59. Q. Then were they all joint transactions with other parties?

A. They were.

60. Q. And not entered into by you alone?

A. No. There was also a quantity of wines bought by a gentleman. I cannot tell who he is. He lives in Europe now.

On further examination by counsel for creditors, witness further testified.

61. Q. Where is the book which you have stated you have found since you were examined on Monday last?

A. I have it here with me.

62. Q. Will you let me see it?

A. Certainly.

(The book in question was produced.)

63. Q. Does this book show all your transactions between the 20th day of December, 1865, the first entry, and the 15th day of August, 1866, the last entry?

A. I should think it did.

64. Q. Where subtractions are made and the same carried out in the right hand columns of this book, do they not show profits from
168 the transactions, except where the book states them to be losses?

A. They do.

(The said book was here offered in evidence, marked Exhibit B, March 31, 1869.)

Q. Does that book show your last business transactions prior to your being connected with the pavement?

A. I do not at this time recollect of any other.

JOHN N. BONESTEEL.

Read over and subscribed before me.

I. T. WILLIAMS,
Register.

169 Mrs. S. H. BONESTEEL.

Direct examination:

375. Q. You are the wife of J. N. Bonesteel, the bankrupt in this case?

A. Yes, sir.

376. Q. Did you at any time receive from Jonathan Taylor a transfer of an interest for laying the Nicholson pavement in the city of Brooklyn?

A. Yes, sir.

377. Q. At what time did you receive it?

A. I think it was in 1867, or it might have been earlier.

378. Q. At what place did you receive it?

A. Mr. Taylor was at the house, and the papers were signed there.

379. Q. At what house?

A. No. 248 Carlton avenue.

380. Q. Is that where you resided at the time?

A. Yes, sir.

381. Q. Were the papers signed at that house?

A. I think they were, sir.

382. Q. Who were present?

A. Could not remember now.

383. Q. Can you remember any person that was present; and if so, who?

A. I do not remember.

384. Q. What interest had those papers assigned to you?

A. One-half interest.

385. Q. One-half interest in what, and for what?

A. In the city of Brooklyn—the right to lay the Nicholson pavement in the city of Brooklyn.

170 386. Q. State how that transfer came to be made to you.

A. Because my husband had money to try and support the family. Mr. Taylor wanted him to devote his time in advancing the pavement, and I was not willing, under the advice of my friends, that he should give up his time unless he was remunerated in some way.

387. Q. Was the interest transferred to you then in consideration of the time that he had given to Mr. Taylor?

A. Yes.

388. Q. Did you have any conversatian with Mr. Taylor upon the subject prior to the time the transfer was made?

A. Yes, sir.

389. Q. How many?

A. I could not say. He was at the house several times.

390. Q. For what purpose did he call at your house?

A. To discuss this matter.

391. Q. Was Mr. Bonesteel present when he called?

A. I think he was.

392. Q. Did he call upon you or upon Mr. Bonesteel?

A. As we both saw him, I do not know.

393. Q. With whom was the conversation carried on when he was there?

A. Both of us.

394. Q. Had you known Mr. Taylor in Milwaukee?

A. Yes, sir.

395. Q. Had you known and visited his family in that place?

A. Yes, sir.

171 369. Q. When the transfer was made with you, what was done with the paper that transferred the interest to you?

A. It has been in the house a long time, but I think it is at the office now.

397. What was done with it at the time it was received?

A. I think it was in the house.

398. Q. Who had charge of this paper?

A. I had charge of it.

399. Q. Where was it kept?

A. In a tin box, on the closet shelf.

400. Q. What else was kept in that box?

A. Business papers.

401. Q. What business papers?

A. Business papers connected with Mr. Bonesteel's affairs and my own.

402. Q. Was that box locked—kept locked?

A. Yes.

403. Q. Who kept the key of it?

A. I did.

404. Q. Had Mr. Bonesteel a key to it?

A. No, sir.

405. Q. Did he have access to it at all times when he wanted to?

A. All things are common?

406. Q. Have you not at any time sold a portion of that interest in Brooklyn?

A. Yes, sir.

407. Q. When, and to whom?

A. To Smith & Co.

408. Q. What is the first name of that firm?
A. W'm J.
409. Q. Where does that firm do business?
A. Green Point.
172 410. Q. What did you sell to them?
A. One-half of my half interest.
411. Q. Did you sell it all at one time?
A. No, sir.
412. Q. At how many times?
A. Twice.
413. Q. When was the first sale made, and for how much?
A. I do not remember the date. The first sale was for 1-8th for $4,000.
414. Q. How came that first sale to be made?
A. Mr. Smith furnished lumber for putting down pavement in New York, and was anxious to be connected with the pavement.
415. Q. How did he know that you had any ownership for Brooklyn?
A. I do not know.
416. Q. Did not Mr. Bonesteel make that sale?
A. He acted as my agent.
417. Q. When did you first see Smith & Co. in reference to that sale?
A. When it was being agitated.
418. Q. Where did you see them?
A. In the house in the first place, and afterwards at their place of business.
419. Q. Was not the whole arrangement made for the sale by Mr. Bonesteel?
A. As my agent.
420. Q. Did you do nothing more about it than simply sign the papers?
A. I discussed matters, and consulted with my adviser about it before it was done.
421. Q. Who did you discuss it with, and who was your adviser?
173 A. Mr. Chittenden.
422. Q. Where did you sign the paper that transferred this 1st 8th?
A. I do not remember.
423. Q. Did you go at any time to the place of business of Smith & Co., relative to the sale of this first 8th.
A. Yes, sir.
424. Q. Was that before the paper was signed or afterwards?
A. I could not tell.
425. Q. For what purpose did you go there?
A. I cannot tell for certain.
426. Q. What took place whilst you was there?
A. I do not remember which paper was signed at their office, or which at their house.
427. Q. Can you state what took place the first time you was at the office of Smith & Co.?
A. No, sir.
428. Q. Are you able to state now, why you went to their office upon this occasion?
A. I went to discuss the matter of pavement.
429. Q. What did you do after you got there.
A. Talked, I suppose.
430. Q. Did your husband accompany you at that time?
A. Yes.
431. Q. Did you not go there at his request?

A. I cannot say.

432. Q. Did you know at that time that they were talking of buying the interest in this pavement of Brooklyn?

A. Yes, sir.

174 433. Q. Did not your husband tell you, and did you not learn from him that they wanted to buy this interest?

A. Very possibly.

434. Q. Was not the price agreed upon between them and your husband?

A. No, sir.

435. Who was it agreed upon with?

A. By consulting with Mr. Chittenden I thought that we would accept their prices.

436. Q. To whom did they make that offer first?

A. They made the offer to Mr. Bonesteel as my agent.

437. Q. And he negociated it to you?

A. Yes, sir.

438. Q. And you decided to accept it?

A. Yes, sir.

439. Q. Did he go with you to see Mr. Chittenden?

A. No, sir.

440. Q. What price was paid for this 1st eighth?

A. $4,000 in notes.

441. Q. Was it paid?

A. They gave their notes payable at different times.

442. Q. How many notes?

A. Three, I think.

443. Q. What was the amount of them?

A. I could not remember now; I should think two were $1,500, but I could not remember.

444. Q. To whose order were they made payable.

A. To mine.

445. Q. To whom were the notes given; to whom did they give the notes when they took the transfer to themselves?

A. Mr. Bonesteel.

175 446. Q. What was done with those notes?

A. I took the notes to Mr. Chittenden.

447. Q. For what purpose?

A. Because he transacted my business for me.

448. Q. For what purpose did you take the notes to Mr. Chittenden?

A. To hold them for me; then to advance money, as I needed it, to advance the pavement.

449. Q. How much money did Mr. Chittenden advance to you on these $4,000 of notes?

A. I could not state, because I had the money as I wanted it.

450. Q. Did he pay that money to you or to Mr. Bonesteel?

A. To me.

451. Q. In all cases.

A. I think so, in every one.

452. Q. Did you endorse those notes?

A. I did.

453. Q. How did you endorse them?

A. I suppose by signing my name.

454. Q. When was that transaction made, Mrs. Bonesteel—that first one?

A. I do not remember the date.
455. Q. Was it before the organization of the co. in Brooklyn?
A. Yes.
456. Q. How long afterwards did you sell them the other 8th?
A. A few months?
457. Q. For how much?
A. Six thousand dollars.
458. Q. Who negociated that sale with them?
A. Mr. Bonesteel.
459. Q. How did they pay that $6,000?
176 A. By notes.
460. Q. How many notes?
A. Four, I think.
461. Q. To whom were these notes made payable?
A. To me.
462. Q. Who received them of Smith & Co.
A. Mr. Bonesteel.
463. Q. What was done with these notes?
A. Taken to Mr. Chittenden.
464. Q. Did he advance you money for them?
A. Yes, sir.
465. Q. How much money?
A. I could not state.
466. Q. Was all the money that he advanced on that paid to you?
A. Yes, sir.
467. Q. Did Mr. Bonesteel have any money in Mr. Chittenden's hands at that time?
A. No, sir.
468. Q. What was done with that $10,000?
A. Part of it, I think, was used for expenses.
469. Q. How much?
A. I could not tell exactly.
470. Q. Then it has gone to pay assessments made by the company. What were these assessments for?
A. To purchase tools and for working capital, and to advance the pavement interest, and otherwise.
471. Q. How much of the stock of the company did you receive when it was organized?
A. 1,150 shares.
177 472. Q. What persons, besides yourself, were interested in that company?
A. W'm Smith & Co., Kidder & Co., Kidder and Martin.
473. Q. Did you have anything to do personally with the organization of the company?
A. No; Mr. Bonesteel acted as my agent in the matter.
474. Q. Did you sign any papers in connection with the organization?
A. Yes.
475. Q. What papers?
A. Two papers to be signed to represent my interest.
476. Q. What papers were they?
A. Papers that were required by the company to sign.
477. Q. Do you know yourself what papers it was that you signed?
A. No.
478. Q. You merely signed as your husband told you to sign?
A. As the officer of the company required.
479. Q. Your husband was there, I suppose?

A. My husband was present, I suppose.

480. Q. Mr. Bonesteel acted as your agent in all the matters connected with the organization of the co., did he not?

A. He did.

481. Q. And he has acted as your agent ever since, has he not?

A. Yes, sir.

482. Q. How much money have you realized from this interest in Brooklyn since it was conveyed to you by Mr. Taylor?

A. Not any.

483. Q. You have got $10,000 for one quarter of it?

178 A. It is all gone.

484. Q. How much of that was applied to the support of the family—of that $10,000.

A. I should think about $4,000.

485. Q. Mr. Bonesteel has been in receipt of a salary ever since it was organized?

A. Yes.

486. Q. And that has been applied to the support of the family?

A. Yes, sir.

487. Q. And you have received *prior further* considerable money also for the support of the family since the 1st of May, 1867, have you not?

A. Yes.

488. Q. His statement which is in evidence here states the amount from the 1st of May, 1867, to the 1st of December, 1868, to be 1,743 dollars. Is that correct?

A. I presume it is correct, because it is in my father's handwriting.

489. Q. Have you transferred any of the shares to any person or to Mr. Bonesteel?

A. I gave my husband 5 shares to enable him to become a trustee in the company.

490. Q. When was that?

A. Just before the last yearly meeting, I think; the first Tuesday in November.

491. Q. How came you to transfer these 5 shares to him?

179 A. Because I wanted him to be able to vote.

492. Q. Did he propose to you to have the shares transferred for that purpose?

A. I do not know.

493. Q. Where did you get the information that it was necessary that he should have these shares in order to become a trustee?

A. From the secretary of the company.

494. Q. How came you to get it from him?

A. Perhaps because I asked him.

495. Q. How came you to ask him, if you did?

A. I do not know.

496. Q. What arrangement was made between you and your husband in reference to his acting as your agent in this Brooklyn interest?

A. I gave him a power of attorney to act as my agent, to do all negociations and to attend regular meetings of the company.

497. Q. How came you to give him that power of attorney?

A. Because I could not always go.

498. Q. Did you give it to him at his suggestion?

A. I think not.

499. Q. Who drew that power of attorney?

A. I do not remember.

500. Q. Did not he draw it himself?
A. I think not.
501. Q. Did not he have it drawn?
A. Very possibly.
502. Q. Did you ever attend any of the meetings of the company?
A. Not that I recollect.
180 503. Q. Did you ever attend any meetings of the company at all?
A. At the business meetings I have met all the officers of the company; not attended one of their regular specified meetings.
504. Q. Were they to meet the officers of the company?
A. At the offices.
505. Q. How frequently have you been there to the office?
A. Sometimes every week.
506. Q. For what purpose did you go there?
A. Different reasons.
507. Q. State the reasons why you went there?
A. I could not now.
508. Q. Can you remember any reason why you went there at that time?
A. Yes.
509. Q. State it.
A. I had been there when I had drawn checks. I had been there to carry the money; I had been there to confer with the secretary of the co.
510. Q. What did you mean by being there to carry the money?
A. When the company has required money I have been to Chittenden's, he has advanced me money, and I have taken it to them.
181 511. Q. How did you get your information from time to time, that the company required money; did you get it from Mr. Bonesteel?
A. No, sir; not entirely.
512. Q. Did you not principally?
A. I do not know. I have been in the habit of discussing the interest of the pavement co. with all the officers of the co. I think not.
513. Q. Prior to the organization of this company under what arrangement did Mr. Bonesteel act as your agent?
A. I gave him power to act as my———
514. Q. What compensation did Mr. Bonesteel receive for acting as your agent?
A. I do not know of any.
515. Q. Was there anything ever said between you as to compensation?
A. No.
516. Q. Had you any consultation with your husband about this examination?
A. No; he told me that I was to come here and tell you what I knew.
517. Q. Has he stated to you what he stated here?
A. No, sir.
518. Q. Have you and your husband—have you not had any conversation with him relative to this bankruptcy proceeding and the opposition of creditors?
A. We have not discussed it at all.

(Petitioner's attorney stated that she has attended several examinations.)

519. Q. Have you stated, Mrs. Bonesteel, all the circumstances under which the interest for Brooklyn was transferred to you?

181 A. I think so, I have answered all your questions.

Termination of Mrs. Bonesteel's examination.

Adjourned to Feb. 2nd, 1869.

Examination held Feb'y 2, 1869, the whole time of which was consumed by the bankrupt & his attorney in reading their testimony.

Examination of Mrs. Bonesteel continued.

520. Q. State what business your husband was engaged in at the time that you state that Mr. Taylor wanted him to devote his time to the matter of the pavement.

A. He was engaged in buying and selling goods on commission.

521. Q. And the proceeds of the business went to the support of the family?

A. So far as there were any, they went to the support of the family.

522. Q. Was any of the money which you say was advanced to the pavement company ever returned in any way?

A. No, not in any way. We have not had anything except Mr. Bonesteel's salary.

523. Q. When these advances were made to the company did you or Mr. Bonesteel get any receipt or other evidence for them?

A. The company reserved a part of their stock as working capital, and when I advanced the money I received 44 shares of this reserved stock for it. I don't remember at what price I received it. I made

183 several advances of money. These 44 shares stand in my name in the books of the company in addition to the 1,150 shares which were originally issued to me, and of which I transferred five shares to my husband to enable him to become a trustee. This is as I understand it.

524. Q. State whether you have transferred at any time or sold any portion of these 44 shares or of these 1,145 shares.

A. I have not; I have them still.

Cross-examined by counsel for bankrupt:

On further reflection with reference to the transfer made by Mr. Taylor, having been executed at my house, I will say that I confounded it with other papers executed there. I was not present when it was executed, but understand it was executed in New York, and wish to correct my testimony accordingly. The money I stated Mr. Bonesteel had to do business with was money which I received from my father. I cannot now state whether the Smith & Co. notes were payable to my order or whether Messrs. Chittenden required me to endorse them. The $4,000 of the $10,000 which I stated were devoted to family expenses have been used during a period of 3 years, and during the past 3 years our family expenses has been about $5,000 a year. As to these 44 shares, I understand they are in the treasury of the company, and if there

184 is any return for them I shall get it. I now recollect that I sold these 44 shares to Page, Kidder & Co. for $2,000.

Reëxamination:

525. Q. When your direct testimony was being read to you as to the 44 shares, did not your husband, now present, look at you and shake his head?

A. He told me I was not right, and I set my wits to work and I recollected.

SOPHIA H. BONESTEEL.

Sworn before me this 8th day of February, 1860.

I. T. WILLIAMS,
Register, &c.

A true copy of the original on file.
[SEAL.]

GEO. F. BETTS,
Clerk.

185 United States circuit court, eastern district of New York.

JAMES C. VOORHEES, ASSIGNEE IN BANKRUPTCY of John N. Bonesteel, bankrupt,
vs.
JOHN N. BONESTEEL & SOPHIA H. BONESTEEL. } In equity.

This cause having come on to be heard upon the bill of complaint herein, the separate answers thereto of the defendants, John N. Bonesteel and Sophia H. Bonesteel, the replications of the complainant to such separate answers, and the proofs, oral, documentary, and written, taken and filed in said cause, and having been argued by counsel for the respective parties:

Now, therefore, on consideration thereof, it is ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree that the complainant's said bill of complaint be, and the same hereby is, dismissed, with costs to the defendants to be taxed.

CHA'S L. BENEDICT.

186 (Indorsed:) U. S. district court, eastern dist. of N. Y. In equity. James C. Voorhees, assignee, &c., vs. John N. Bonesteel & Sophia H. Bonesteel. Final decree. Proof by the complainant. Filed & ent'd Nov. 11, 1870.

187 United States circuit court, eastern district of New York.

JAMES C. VOORHEES, ASSIGNEE IN BANKRUPTCY of John N. Bonesteel, bankrupt,
vs.
JOHN N. BONESTEEL & SOPHIA H. BONESTEEL. } In equity.

And now comes James C. Voorhees, assignee in bankruptcy of John N. Bonesteel, bankrupt, the complainant in the above-entitled cause, by Cotterill Brothers, his attorneys, and here in open court, and at the same time in which the final decree in this cause was rendered, hereby prays an appeal to the Supreme Court of the United States from said final decree.

JAMES C. VOORHEES,
Assignee in Bankruptcy of John N. Bonesteel, Bankrupt.
By COTTERILL BROTHER,
His Solicitors.

188 (Indorsed:) United States cir. court, eastern dist. of N. Y. James C. Voorhees, assignee, &c., vs. John N. Bonesteel & So-

phia H. Bonesteel. Prayer for appeal to Supreme Court. Filed Nov. 11th, 1870.

189 United States district court, eastern district of New York.

JAMES C. VOORHEES, ASSIGNEE IN BANKRUPTCY of John N. Bonesteel, bankrupt, *against* JOHN N. BONESTEEL & SOPHIA H. BONESTEEL. } In equity.

SEPTEMBER 6, 1870.

This day came the complainant, by Cotterill Brothers, his solicitors, and filed his prayer in writing for an appeal to the Supreme Court of the United States from the final decree rendered in this cause, and at the same time, and in open court, and at the same time at which such final decree was rendered, prayed and claimed such appeal from said final decree to the Supreme Court.

Whereupon it is ordered that said prayer for said appeal, and said appeal be, and the same is hereby, allowed; and the clerk is hereby ordered to transmit the record, papers, proceedings, and testimony taken and filed herein, to the Supreme Court of the United States.

CHA'S L. BENEDICT.

190 (Indorsed:) U. S. circuit court, eastern dist. of N. Y. James C. Voorhees, assignee, &c., vs. John N. Bonesteel & Sophia H. Bonesteel. Order allowing appeal to the Supreme Court. Filed & ent'd Nov. 11, 1870.

191 In the circuit court of the United States for the eastern district of New York.

JAMES C. VOORHEES, ASSIGNEE IN BANKRUPTCY of John N. Bonesteel, bankrupt, *vs.* JOHN N. BONESTEEL & SOPHIA H. BONESTEEL. } In equity.

Know all men by these presents that I, John T. Cornell, of the city of Brooklyn, in the State of New York, held and firmly bound unto John N. Bonesteel and Sophia H. Bonesteel, defendants in the above-entitled cause, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said John N. Bonesteel and Sophia H. Bonesteel, their heirs, executors, and administrators; to which payment, well and truly to be made, I hereby bind myself, my heirs, executors, and administrators, firmly by these presents, sealed with my seals, dated this 26th day of November, eighteen hundred and seventy.

192 Whereas the above-named James C. Voorhees, assignee in bankruptcy of John N. Bonesteel, bankrupt, was appealed to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by the circuit court of the United States for the eastern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named James C. Voorhees, assignee in bankruptcy of John N. Bonesteel, bankrupt, shall prosecute his said appeal to effect, and shall answer all damages and costs if he shall fail to make his appeal good,

then this obligation shall be void; otherwise the same shall be and remain in full force, effect, and virtue.

JOHN T. COWELL. [L. S.]

Sealed & delivered in presence of—
F. G. McDONALD.

CITY AND COUNTY OF NEW YORK, *ss:*

John T. Cornell, subscribed to the foregoing undertaking, being
193 duly sworn, says that he is a resident and freeholder in the city of Brooklyn, King's County, and State of New York, and is worth the sum of one thousand dollars over and above all his debts and *and* liabilities, and exclusive of property by law *except* from execution.

JOHN T. CORNELL.

Sworn to before me this 16th day of November, 1870.

ALFRED M'COLLOUGH,
Notary Public N. Y. Co.

I certify that, on this 16th day of November, 1870, John T. Cornell above-named, to me known to be the person described in and who executed the above instrument, personally appeared before me, and acknowledged that he executed the above undertaking for the uses and purposes therein mentioned.

ALFRED T. McCOLLOUGH,
Notary Public N. Y. Co.

194 (Indorsed:) United States cir. court, eastern dist. of N. Y. John N. Bonesteel, assignee, &c., vs. John N. Bonesteel & Sophia H. Bonesteel. Bond on appeal. Cotterill Brothers, solicitor for appellant. App'd Nov. 21, 1870. Cha's L. Benedict. Filed November 22, '70.

(Indorsements on cover:) No. 449. James C. Voorhees, assignee in bankruptcy of John N. Bonesteel, appellant, vs. John N. Bonesteel and Sophia H. Bonesteel. E. New York C. C. U. S. Filed 28th December, 1870.

U. S. Supreme Court. James C. Voorhees, assignee, &c., vs. John N. Bonesteel and Sophia H. Bonesteel. Record.